No. 3601

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United States

Circuit Court of Appeals

For the Ninth Circuit.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Plaintiffs in Error,

vs.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California.

Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the Northern District of California, Second Division.

THE SACRAMENTO STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants.

Complaint.

The above-named plaintiff, complaining of the above-named defendants, for cause of action alleges as follows:

I.

That at all the times hereinafter mentioned the plaintiff, Sacramento Stockton Steamship Company, was, and still is, a corporation organized under the laws of the State of California, with its principal place of business in the City and County of San Francisco in said State, and at all of said times was, and still is, a citizen of said State of California.

II.

That at all the times hereinafter mentioned the Aetna Insurance Company was, and still is, a corporation duly organized under the laws of the State of Connecticut, with its principal place of business at Hartford in said State of Connecticut, and at all of

said times was and still is a citizen of the said State of Connecticut.

III.

That at all times hereinafter mentioned The Union Marine Insurance Company, Limited, was and still is, a corporation [1*] organized under the laws of the United Kingdom of Great Britain and Ireland, with its principal place of business at Liverpool, and at all of said times was, and still is, a citizen and subject of said United Kingdom of Great Britain and Ireland.

IV.

That at all the times hereinafter mentioned the Hartford Fire Insurance Company was, and still is, a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business at Hartford in said State, and at all of said times it was, and still is, a citizen of said State of Connecticut.

V.

That at all the times herein mentioned the said Sacramento Stockton Steamship Company was the owner of the steamer hereinafter referred to and called the "Monarch," together with her body, tackle, apparel, boats and other furniture.

VI.

That heretofore, to wit, on the 22d day of July, 1914, the said Aetna Insurance Company made, executed, and delivered to the said Sacramento Stock-ton Steamship Company its certain policy of insur-

*Page-number appearing at foot of page of original certified Transcript of Record.

ance wherein and whereby the said Aetna Insurance Company agreed to, and then and there did, insure the said Sacramento Stockton Steamship Company for the sum of Ten Thousand ($10,000.00) Dollars, upon the body, tackle, apparel, ordinance, munitions, artillery, boat and other furniture of and in the said steamer called the "Monarch," from July 22d, 1914, at noon, Pacific Standard Time, to July 22, 1915, at noon, Pacific Standard time, against the perils in said policy enumerated, a copy of which policy is hereto attached, marked Exhibit "A" and hereby specially referred to and made a part of this complaint.

VII.

That heretofore, to wit, on the 25th day of July, 1914, the said The Union Marine Insurance Company, Limited, made, executed and delivered to the said Sacramento Stockton Steamship Company, [2] its certain policy of insurance wherein and whereby the said The Union Marine Insurance Company, Limited, agreed to and then and there did, insure the said Sacramento Stockton Steamship Company for the sum of Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars, upon the body, tackle, apparel, ordinance, munitions, artillery, boat and other furniture in the said steamer called the "Monarch," from July 22d, 1914, noon, Pacific Standard time, to July 22d, 1915, noon, Pacific Standard Time, against the perils in said policy enumerated, a copy of which said policy is hereto attached, marked Exhibit "B," and hereby specially referred to and made a part of this complaint.

VIII.

That heretofore, to wit, on the 22d of July, 1914, the said Hartford Fire Insurance Company made, executed and delivered to the said Sacramento Stockton Steamship Company its certain policy of insurance wherein and whereby the said Hartford Fire Insurance Company agreed to and then and there did, insure the said Sacramento Stockton Steamship Company for the sum of Six Thousand ($6,000.00) Dollars, upon the body, tackle, apparel, ordinance, munitions, artillery, boat and other furniture on and in the said steamer called the "Monarch," at and from July 22d, 1914, noon, Pacific Standard time, to July 22d, 1915, noon, Pacific Standard time, against the perils in said policy enumerated, a copy of which said policy is hereto attached, marked Exhibit "C," and hereby specially referred to and made a part of this complaint.

IX.

That thereafter, to wit, on or about the 15th day of April, 1915, the said steamer "Monarch" was wrecked and totally lost by perils in said policies named, and thereby insured against.

X.

That thereafter on the 3d day of June, 1915, the said Sacramento Stockton Steamship Company served Notice of Abandonment upon said Aetna Insurance Company, which said Notice of Abandonment [3] was in words and figures following, to wit:

"To Aetna Insurance Company of Hartford, Connecticut, and to E. J. Livingston, its Agent:

Please take notice: That the Steamer 'Monarch,' her body, tackle, apparel, machinery, boilers, boats, and furniture insured with you for the sum of Ten Thousand ($10,000.00) Dollars under your policy No. 3563, in favor of Sacramento Stockton Steamship Company, has been heretofore, to wit: On or about the 15th day of April, 1915, wrecked and lost by perils insured against in your said policy, and the said Sacramento Stockton Steamship Company hereby abandons to you, as insurers on the said vessel, all its right, title and interest in and to the said Steamer 'Monarch,' her body, tackle, apparel, machinery, boilers, boats and furniture in the proportion that the sum insured therein bears to the valuation in the said policy, and hereby gives you notice that the said insured intends to claim from you the whole sum insured under said policy as and for a total loss.

Dated, San Francisco, California, June 3d, 1915.

SACRAMENTO STOCKTON STEAMSHIP COMPANY,

By GEORGE G. GORMLEY,

President.

W. W. COPE,

Secretary."

XI.

That in reply to said Notice of Abandonment the said Aetna Insurance Company did, on the 8th day of June, 1915, serve upon said Sacramento Stockton Steamship Company its refusal to accept said aban-

donment, and assigned its reason therefor in words and figures following:

"San Francisco, Cal.,
June 8, 1915.

Sacramento–Stockton Steamship Co.,
Pier No. 3,
San Francisco, Cal.

Dear Sirs:

Policy No. 3563—Steamship 'Monarch.'

We beg to notify you that we refuse to accept the abandonment of your interest in the steamer 'Monarch' said to have been wrecked and lost on or about the 15th day of April, 1915.

Our policy No. 3563 was rescinded and voided by the unseaworthiness of said vessel which caused her loss.

Yours very truly,
E. J. LIVINGSTON,
Asst. General Agent."

XII.

That thereafter, to wit, on the 3d day of June, 1915, the [4] *the* said Sacramento Stockton Steamship Company served Notice of Abandonment upon the said The Union Marine Insurance Company, Limited, which said Notice of Abandonment was in words and figures following, to wit:

"To The Union Marine Insurance Company, Limited, of Liverpool, and to W. Irving, Esq., its Pacific Coast Branch Manager:

Please take notice: That the steamer 'Monarch,' her body, tackle, apparel, machinery, boilers, boats and furniture, insured with you for the sum of Three

Thousand Seven Hundred and Fifty ($3,750.00) Dollars, under your Policy No. 709, in favor of the Sacramento Stockton Steamship Company, has been heretofore, to wit, on or about the 15th day of April, 1915, wrecked and lost by perils insured against in your said policy, and the said Sacramento–Stockton Steamship Company hereby abandons to you as insurers on the said vessel, all its right, title and interest in and to said steamer 'Monarch,' her body, tackle, apparel, machinery, boilers, boats and furniture, in the proportion that the sum insured therein bears to the valuation in the said policy, and hereby gives you notice that the said insured intends to claim from you the whole sum insured under your said policy as and for a total loss.

Dated, San Francisco, California, June 3d, 1915.

SACRAMENTO STOCKTON STEAMSHIP COMPANY,

By GEORGE G. GORMLEY,

President.

W. W. COPE,

Secretary.''

XIII.

That in reply to said Notice of Abandonment the said The Union Marine Insurance Company, Limited, did, on the 5th day of June, 1915, serve upon said Sacramento Stockton Steamship Company its refusal to accept said abandonment, and assigned its reason therefor in words and figures following:

"San Francisco, Cal.,
June 5/15.

Sacramento Stockton Steamship Co.,
San Francisco, Calif.

Dear Sirs: We beg to notify you that we refuse to accept the abandonment of your interest in the steamer 'Monarch' said to have been wrecked and lost on or about the 15th day of April, 1915.

Our policy No. 709 was rescinded and voided by the unseaworthiness of said vessel which caused her loss.

Respectfully yours,
WM. HENDERSON,
Underwriter." [5]

XIV.

That thereafter, to wit, on the 3d day of June, 1915, the said Sacramento Stockton Steamship Company served notice of abandonment upon said Hartford Fire Insurance Company, which said Notice of Abandonment was in words and figures following, to wit:

"To the Hartford Fire Insurance Company, Hartford, Connecticut, and to Dixwell Hewitt, Its General Agent:

Please take notice: That the Steamer 'Monarch,' her body, tackle, apparel, machinery, boilers, boats and furniture, insured with you for the sum of Six Thousand ($6,000.00) Dollars, under your policy No. 40035, in favor of Sacramento Stockton Steamship Company, has been heretofore, to wit: on or about the 15th day of April, 1915, wrecked and lost by perils insured against in your said policy, and the

said Sacramento Stockton Steamship Company hereby abandons to you as insurers on the said vessel, all its right, title and interest in and to the said steamer 'Monarch,' her body, tackle, apparel, machinery, boilers, boats and furniture in the proportion that the sum insured therein bears to the valuation in the said policy, and hereby gives you notice that the said insured intends to claim from you the whole sum insured under said policy as and for a total loss.

Dated, San Francisco, California, June 3d, 1915.

SACRAMENTO STOCKTON STEAMSHIP COMPANY,

By GEO. G. GORMLEY,

President.

W. W. COPE,

Secretary."

XV.

That in reply to said Notice of Abandonment the said Hartford Fire Insurance Company did, on the 9th day of June, 1915, serve upon the said Sacramento Stockton Steamship Company its refusal to accept said abandonment, and assigned its reason therefor in words and figures following:

"June 9–15.

Sacramento Stockton Steamship Co.,

Pier 3,

San Francisco, Cal.

Gentlemen: In re Steamship 'Monarch,' we beg to notify you that we refuse to accept the abandonment of your interest in the steamer 'Monarch,' said to have been wrecked and lost on or about the

15th day of April, 1915, and return said letter of abandonment herewith.

Our policy #40035 was rescinded and voided by the unseaworthiness of the said vessel which caused her loss.

Yours very truly,
M. F. BARCLAY,
Special Agent." [6]

XVI.

That it is, in and by the terms of each and all of said policies of insurance aforesaid, among other things, provided that claims, if any, including claim for constructive total loss, are to be adjusted according to English law and practice; that it is the English law and practice that in a time policy of insurance there is no implied warranty that the ship shall be seaworthy at any stage of the adventure.

XVII.

That the said Sacramento Stockton Steamship Company has duly performed all of the conditions in each and all of said policies of insurance contained on its part to be performed.

XVIII.

That each and all of the insurance companies, defendants above named, have refused to pay said insurance, or any part thereof, and no part thereof has been paid.

WHEREFORE, said plaintiff prays for judgment against said Aetna Insurance Company for the sum of Ten Thousand ($10,000.00) Dollars, together with interest thereon from the 3d day of June, 1915,

and costs of suit; against the said The Union Marine Insurance Company Limited, for the sum of Three Thousand Seven Hundred and Fifty ($3,750.00) Dollars, together with interest thereon from the 3d day of June, 1915, together with costs of suit; and against the said Hartford Fire Insurance Company for the sum of Six Thousand ($6,000.00) Dollars, together with interest thereon from the 3d day of June, 1915, together with the costs of suit.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff. [7]

State of California,
City and County of San Francisco,—ss.

George G. Gormley, being duly sworn, deposes and says: That at all the times in said complaint mentioned he was, and still is, an officer of the said corporation plaintiff, to wit: the president thereof; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

GEO. G. GORMLEY.

Subscribed and sworn to before me this 8th day of September, 1915.

[Seal] J. A. SCHAERTZER,
Deputy Clerk United States District Court, Northern District of California. [8]

Plaintiff's Exhibit "A."

Steamer S. S. "MONARCH"

THIS POLICY IS TO COVER ONLY AS FOLLOWS:

Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire policy as issued by the Aetna Insurance Company of Hartford, Conn.

Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

COLLISION CLAUSE.

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured we, the Assurers, will pay the Assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured and in cases in which the liability of the Ship has been contested with our consent in writing, we the Assurers, will also pay a like proportion of four-fourths of the costs which the Assured shall thereby incur or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of each Vessel had been compelled to pay to the owners

of the other of such Vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

PROVIDED ALWAYS THAT THIS CLAUSE SHALL IN NO CASE EXTEND TO ANY SUM WHICH THE ASSURED MAY BECOME LIABLE TO PAY, OR SHALL PAY FOR REMOVAL OF OBSTRUCTIONS UNDER STATUTORY POWERS, FOR INJURY TO HARBORS, WHARVES, PIERS, STAGES, AND SIMILAR STRUCTURES, CONSEQUENT ON SUCH COLLISION, OR IN RESPECT OF THE CARGO OR ENGAGEMENTS OF THE INSURED VESSEL, OR FOR LOSS OF LIFE OR PERSONAL INJURY.

And it is further agreed that the principles involved in this clause shall apply to the case where the vessels are the property in part or in whole of the same owners.

Loss or damage sustained by the vessel insured through collision with another ship or vessel or with wharves, piers, stages, or similar structures if amounting to $750.— The cost of repairs of such damage being paid without deduction of one-third new for old.

This policy also covers while vessel is at wharves or docks and permission granted to carry passengers, freight, material and supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

Permitted to tow and to be towed and to assist vessels and/or craft in all situations.

Warranted by the Assured confined to San Francisco Bay and/or tributaries, including Sacramento and/or San Joaquin Rivers.
during the currency of this policy.

The foregoing clauses are to be regarded as substituted for the terms of the policy to which they are attached, the latter being hereby waived.

Attached to Policy No. 3563.

J. A. W.

[Printed on left-hand margin]: Subject to Limitations of Trade as Specified in Slip Attached to this Policy.

J. A. W.

It is Agreed that Clauses on Slip Attached Hereto Form Part of This Policy. J. A. W.

Duplicate.

J. A. W.

Marine Department.

AETNA INSURANCE COMPANY.

Hartford, Connecticut.

Incorporated, 1819. Cash Capital, $5,000,000.

Pacific Branch, San Francisco, California.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY.

On account of ..... Concerned..... Policy No. 3

In case of loss, to be paid in funds current in the United States to ..... Assured, or order.....

Does make Insurance and cause TEN THOUSAND DOLLARS Sum Insured,

To be insured from July 22nd, 1914 at Noon, Pacific Standard Time to July 22nd, 1915 at Noon, Pacific Standard Time. $10,000.—

As employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and in the good Steamer.... called the .... "MONARCH"..... or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship &c., as above, and shall so continue and endure during the period as aforesaid. Should the above vessel be at sea on the expiration of this Policy, it is agreed to hold her covered until arrival at port of Rate Per Cen

Premium 300.

destination on her being moored therein twenty-four hours in good safety (provided that before the expiration the Assured shall have given notice of intention to so continue) at a pro rata monthly premium, and it shall be lawful for the said ship, &c., to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the assured, by agreement between the Assured and Assurers [9] in this Policy, are and shall be valued at as follows:

Hull, Tackle, Apparel and Furniture,.....$

Machinery and Boilers.....$40,000.—

FORTY THOUSAND .....DOLLARS

TOUCHING the Adventures and Perils which we, the said insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or sall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof; and in case of any Loss or Misfortune it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof the said Insurance Com-

pany will contribute according to the Rate and Quantity of the sum herein insured. [Written across face of canceled matter: Void J. A. W.] And it is specially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this Insurance by the Insured or his or their Assigns, at and after the rate of 3 per cent, to return—per cent, for every 30 consecutive days the vessel may be laid up in port, or in dock; during such period the vessel being at the risk of the Insurers—to return pro rata premium for every 30 days of unexpired time, if this Policy be cancelled and arrival.

Free from average under Three per cent, unless general or the ship be stranded, sunk or burnt, on fire or in collision with another ship or vessel.

[Written across face of canceled matter: Void J. A. W.]

Claims, if any, including claim for constructive total loss, to be adjusted according to English law and practice.

With leave to sail with or without Pilots, to tow and assist vessels and craft in all situations, and to be towed and to go on trial trips.

With liberty to discharge, exchange, and take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free from any claim in respect of jettison of cattle or goods carried on deck. Average payable on each valuation separately, or on the whole. Each voyage to be subject to separate average. In event of damage, cost of repairs to be paid

without deduction of one-third whether the average be particular or general. General average payable as per foreign custom if required, or per York-Antwerp Rules, if in accordance with the contract of affreightment.

[Written across face of canceled matter: Void J. A. W.]

IT IS AGREED, that if the ship hereby insured shall come into collision with any other ship or vessel, and the insured shall in consequence thereof become liable to pay, and shall pay any sums not exceeding the value of the ship hereby insured, in respect of injury to such other ship or vessel, itself, or to the goods and effects on board thereof, or for loss of freight then being earned upon such goods by such other ship or vessel, the INSURERS will pay the Insured such proportion of three-fourths parts of said sums as the amount hereby insured bears to the value of the ship hereby insured. But this agreement is in no case to be construed as extending to any sums which the Insured may become liable to pay, or shall pay in respect of loss [10] of life or personal injury to individuals, from any cause whatever.

Provided always that this clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for the removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

[Written across face of canceled matter: Void J. A. W.]

It is agreed that any charge of interest in the vessel hereby insured shall not affect the validity of this Policy.

If there be an Agent of the INSURERS located at or near any place where repairs are made, or proofs of

loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company.

IN WITNESS WHEREOF, the said AETNA INSURANCE COMPANY, has caused this Policy to be signed by its President, and attested by its Marine Secretary, at its office in the City of Hartford, and State of Connecticut, and this Policy is made and accepted upon the above expressed conditions, but shall not be valid unless countersigned by the duly authorized Agents of the Company.

Countersigned at SAN FRANCISCO, CAL.
this 22d day of July, 1914.

(Sg.) WM. K. CLARK,
President.
" W. F. WHITTELSEY, Jr.,
Marine Secretary.

(Sg.) E. J. Livingston,
Asst. Gen'l. Agent. [11]

[Printed on right-hand margin]: Warranted free from capture, seizure and detention, and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of riots, civil commotions, hostilities or warlike operations, whether before or after declaration of war.

[Endorsement]: Hull Time. English Form. No. 3563. Expires, July 22d, 1915. Vessel S. S. "Monarch." Assured Sacramento–Stockton S. S. Co. Aetna Insurance Company, Hartford, Connecticut. Marine Department. 325 California Street, San Francisco, Cal. $10,000.— at 3% $300.— (Stamp) H. Stephenson Smith, General Insurance Agent. [12]

Plaintiff's Exhibit "B."

Steamer S. S. "MONARCH"

THIS POLICY IS TO COVER ONLY AS FOLLOWS:

Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire Policy as issued by the Aetna Insurance Company of Hartford, Connecticut.

Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

COLLISION CLAUSE.

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured and in cases in which the liability of the Ship has been contested with our consent in writing, we the Assurers, will also pay a like proportion of four-fourths of the costs which the Assured shall thereby incur or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of each Vessel had been compelled to pay to the owners

of the other of such Vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

PROVIDED ALWAYS THAT THIS CLAUSE SHALL IN NO CASE EXTEND TO ANY SUM WHICH THE ASSURED MAY BECOME LIABLE TO PAY, OR SHALL PAY FOR REMOVAL OF OBSTRUCTIONS UNDER STATUTORY POWERS, FOR INJURY TO HARBORS, WHARVES, PIERS, STAGES, AND SIMILAR STRUCTURES, CONSEQUENT ON SUCH COLLISION, OR IN RESPECT OF THE CARGO OR ENGAGEMENTS OF THE INSURED VESSEL, OR FOR LOSS OF LIFE OR PERSONAL INJURY.

And it is further agreed that the principles involved in this clause shall apply to the case where the vessels are the property in part or in whole of the same owners.

Loss or damage sustained by the vessel insured through collision with another ship or vessel or with wharves, piers, stages, or similar structures if amounting to $750.— The cost of repairs of such damage being paid without deduction of one-third new for old.

This policy also covers while vessel is at wharves or docks and permission granted to carry passengers, freight, material and supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

Permitted to tow and to be towed and to assist vessels and/or craft in all situations.

Warranted by the Assured confined to waters of San Francisco Bay and tributaries, including Sacramento and/or San Joaquin Rivers.

during the currency of this policy.

The foregoing clauses are to be regarded as substituted for the terms of the policy to which they are attached, the latter being hereby waived.

Attached to Policy No. 709.

[Printed on left-hand margin]: It is Agreed that the Clauses on Slip Attached Hereto Form Part of this Policy.

o. 709. $3750.00

HULL TIME

HE UNION MARINE INSURANCE COMPANY, LIMITED,

Head Office

cific Coast Branch.

Irving, Manager.

Gallegos, Asst. Manager.

Branch Offices at

11 Dale Street, Liverpool.

London: 1 Threadneedle Street.

Manchester: 47 Spring Gardens.

Glasgow: 22 Royal Exchange Square.

New York: 37 Wall Street.

H. R. Robertson,
Chairman,
J. Sandeman Allen,
Gen. Manager and Secretary.

Wm. Henderson,
arine Underwriter.

WHEREAS it hath been proposed to THE UNION ARINE INSURANCE COMPANY, LIMITED, By acramento–Stockton Steamship Co., as well in his or heir own name as for and in the name or names of all nd every other person or persons to whom the subject natter of this Policy does may or shall appertain in part r in all to make with the said Company the Insurance ereinafter mentioned and described.

NOW THIS POLICY WITNESSETH that in con-ideration of the said person or persons effecting this 'olicy promising to pay to the said Company the sum of)ne Hundred Twelve and 50/100 Dollars, as a premium t and after the rate of three per cent, the said Company akes upon itself the burthen of such Insurance to the mount of Thirty-seven hundred fifty and 00/100 Dollars, o be insured from July 22d, 1914 noon Pacific Standard

Time to July 22d, 1915 noon Pacific Standard Time.

As employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and in the good Steamer called the "MONARCH" or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship &c., as above, and shall so continue and endure during the period as aforesaid. Should the above vessel be at sea on the expiration of this Policy, it is agreed to hold her covered until arrival at port of destination on her being moored therein twenty-four hours in good safety (provided that before the expiration the Assured shall have given notice of intention to so continue) at a pro rata monthly premium, and it shall be lawful for the said ship, &c., [13] to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, Tackle, Apparel and Furniture,.....$

Machinery and Boilers.....$40,000.00

FORTY THOUSAND AND 00/100.....DOLLARS.

TOUCHING the Adventures and Perils which we, the said insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-

Insured

0.00.

Per Cent 3.

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2.50.

mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof.

In case of any Loss or Misfortune, it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and recovery of the said ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof the said Insurance Company will contribute according to the Rate and Quantity of the sum herein insured. And it is specially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

Free from average under THREE per cent. unless general or the ship be stranded, sunk or burnt, on fire or in collision with another ship or vessel.

Claims, if any, including claim for constructive total loss, to be adjusted according to English law and practice.

With leave to sail with or without Pilots, to tow and assist vessels and craft in all situations, and to be towed and to go on trial trips. With liberty to discharge, exchange, and take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to

carry goods, live cattle, &c., on deck or otherwise, but warranted free from any claim in respect of jettison of cattle or goods carried on deck.

Average payable on each valuation separately, or on the whole. Each voyage to be subject to separate average.

In event of damage, cost of repairs to be paid without deduction of one-third, whether the average be particular or general.

General average payable as per foreign custom if required, or per York-Antwerp Rules, if in accordance with the contract of affreightment.

Warranted free of capture, seizure and detention and the consequences thereof or any attempt thereat piracy excepted and also from all consequences of riots and civil commotions, hostilities or warlike operations whether before or after declaration of war. Warranted free of loss or damage caused by strikers locked-out workmen or persons taking part in labor disturbances or riots or civil commotions.

IN WITNESS WHEREOF this policy has been signed in San Francisco, [14] State of California, this 25th day of July, 1914, for and on behalf of the said Company, by virtue of Power of Attorney granted by said Company in that behalf.

(Sg.) C. WM. HENDERSON,
Underwriter. [15]

[Printed on right-hand margin]: This insurance subject to limitations of trade as per slip attached.

[Endorsed]: (English Form.) Hull Time. The Union Marine Insurance Company, Ld., of Liverpool. No. 709. Expires July 22, 1915. Vessel S. S. "Monarch." Assured Sacramento-Stockton S. S. Co. $3750. at 3% $112.50. W. Irving, Manager Pacific Coast Branch, 343 Sansome St., San Francisco, Cal. (Stamp) H. Stephenson Smith, General Insurance Agent. [16]

Plaintiff's Exhibit "C."

STEAMER "MONARCH"

THIS POLICY IS TO COVER ONLY AS FOLLOWS:

Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire Policy as issued by the Hartford Fire Insurance Company of Hartford, Conn.

Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

COLLISION CLAUSE.

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured and in cases in which the liability of the Ship has been contested with our consent in writing, we the Assurers, will also pay a like proportion of four-fourths of the costs which the Assured shall thereby incur or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of each Vessel had been compelled to pay to the owners

of the other of such Vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

PROVIDED ALWAYS THAT THIS CLAUSE IN NO CASE EXTEND TO ANY SUM WHICH THE ASSURED MAY BECOME LIABLE TO PAY, OR SHALL PAY FOR REMOVAL OF OBSTRUCTIONS UNDER STATUTORY POWERS, FOR INJURY TO HARBORS, WHARVES, PIERS, STAGES, AND SIMILAR STRUCTURES, CONSEQUENT ON SUCH COLLISION, OR IN RESPECT OF THE CARGO OR ENGAGEMENTS OF THE INSURED VESSEL, OR FOR LOSS OF LIFE OR PERSONAL INJURY.

And it is further agreed that the principles involved in this clause shall apply to the case where the vessels are the property in part or in whole of the same owners.

Loss or damage sustained by the vessel insured through collision with another ship or vessel, or with wharves, piers, stages, or similar structures if amounting to $750.00.

The cost of repairs of such damage being paid Without deduction of one-third new for old.

This policy also covers while vessel is at wharves or docks and permission granted to carry passengers, freight, material and supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

Permitted to tow and to be towed and to assist vessels and/or craft in all situations.

Warranted by the Assured confined to waters of San Francisco Bay and tributaries, including Sacramento and/or San Joaquin Rivers.

during the currency of this policy.

The foregoing clauses are to be regarded as substituted for the terms of the policy to which they are attached, the latter being hereby waived.

Attached to Policy No. 40035.

(Sg.) DIXWELL HEWITT,
Gen'l Agt.

MARINE DEPARTMENT.

English Form.

POLICY No. 40035.

HARTFORD FIRE INSURANCE COMPANY,

Hartford, Connecticut.

Sacramento–Stockton Steamship Co.

On account of whom concerned.....

In case of loss, to be paid in funds current in the United States to ..... Them, or order .....

Does make Insurance and cause Six Thousand and 00/100 Dollars.

To be insured at and from July 22, 1914, noon Pacific Standard Time to ..... July 22, 1915, noon Pacific Standard Time.

As employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and in the good Steamer.... called the ....."Monarch"..... or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship &c., as above, and shall so continue

[Printed on right-hand margin]: Warranted free from capture, seizure and detention, and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of riots, civil commotions, hostilities or warlike operations, whether before or after declaration of war.

Sum Insured, $6,000.00.

Rate Per Cent 3%.

Premium. $180.00.

It is a Condit of this Poli that any Brok Person, Firm Corporation w Shall Procu this Insuran to be Taken this Compa shall be Deem to be Exclusi ly the Agent the Insured any and Transactions Representatio Relating to t Insurance.

and endure during the period as aforesaid. Should the above vessel be at sea on the expiration of this Policy, it is agreed to hold her covered until arrival at port of destination on her being moored therein twenty-four hours in good safety (provided that before the expiration the Assured shall have given notice of intention to so continue) at a pro rata monthly premium, and it shall be lawful for the said ship, &c., to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the assured, by agreement between the Assured and Assurers in this policy, are and shall be valued at as follows:

Hull, Tackle, Apparel and Furniture,.....$

Machinery and Boilers.....$40,000.—

Forty thousand and 00/100.....Dollars.

TOUCHING the Adventures and Perils which we, the said insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof; and in case of any Loss or Misfortune [17] it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof the said Insurance Com-

pany will contribute according to the Rate and Quantity of the sum herein insured. And it is specially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this Insurance by the Insured or his or their Assigns, at and after the rate of 3 per cent., to return ..... per cent., for every 30 consecutive days the vessel may be laid up in port, or in dock; during such period the vessel being at the risk of the Insurers—to return pro rata premium for every 30 days of unexpired time, if this Policy be cancelled and arrival.

Free from average under THREE per cent., unless general or the ship be stranded, sunk or burnt, on fire or in collision with another ship or vessel.

Claims, if any, including claim for constructive total loss, to be adjusted according to English law and practice.

With leave to sail with or without Pilots, to tow and assist vessels and craft in all situations, and to be towed and to go on trial trips.

With liberty to discharge, exchange, and take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free from any claim in respect of jettison of cattle or goods carried on deck. Average payable on each valuation separately, or on the whole. Each voyage to be subject to separate average. In event of damage, cost of repairs to be paid without deduction of one-third whether the average be particular or general. General average payable as per

foreign custom if required, or per York-Antwerp Rules, if in accordance with the contract of affreightment.

IT IS AGREED, that if the ship hereby insured shall come into collision with any other ship or vessel, and the insured shall in consequence thereof become liable to pay, and shall pay any sums not exceeding the value of the ship hereby insured, in respect of injury to such other ship or vessel, itself, or to the goods and effects on board thereof, or for loss of freight then being earned upon such goods by such other ship or vessel, the INSURERS will pay the Insured such proportion of three-fourths parts of said sums as the amount hereby insured bears to the value of the ship hereby insured. But this agreement is in no case to be construed as extending to any sums which the Insured may become liable to pay, or shall pay in respect of loss of life or personal injury to individuals, from any cause whatever.

Provided always that this clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for the removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

It is agreed that any change of interest in the vessel hereby insured shall not affect the validity of this Policy.

If there be an Agent of the INSURERS located at or near any place where repairs are made, or proofs of loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company. [18]

IN WITNESS WHEREOF, this company has executed and attested these presents, this 22d day of July, 1914. This policy shall not be valid until countersigned by the duly authorized general agent of the company at Hartford, Conn.
San Francisco, Cal.

(Sg.) R. M. BISSELL,
President.

(Sg.) Fred'k Samson, Secretary.

Countersigned by DIXWELL HEWITT, General Agent. [19]

[Endorsement]: Hull Time. English Form. Issued to Sacramento–Stockton Steamship Co. Amount Insured, $6,000.00. Rate 3%, Premium, $180.00. Expires, July 22, 1915. No. 40035. Vessel. Steamer "Monarch." Valued.

Marine and Transportation Department. Hartford Fire Insurance Company. Hartford, Conn. San Francisco Agency, 441 California Street. (Stamp) H. Stephenson Smith, General Insurance Agent.

[Endorsed]: Filed Sep. 8, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California, Second Division.

THE SACRAMENTO STOCKTON STEAMSHIP COMPANY, a Corporation,
Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,
Defendants.

Summons.

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

NATHAN H. FRANK and
IRVING H. FRANK,
Plaintiff's Attorneys.

The President of the United States of America, Greeting:

To the Aetna Insurance Company, a Corporation, The Union Marine Insurance Company, Limited, a Corporation, The Hartford Fire Insurance Company, a Corporation, Defendants.

YOU ARE HEREBY DIRECTED TO APPEAR, and answer the Complaint in an action

entitled as above, brought against you in the District Court of the United States, in and for the Northern District of California, Second Division, within ten days after the service on you of this summons—if served within this county; or within thirty days if served elsewhere.

You are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 8th day of September, in the year of our Lord one thousand nine hundred and fifteen, and of our Independence the one hundred and fortieth.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk. [21]

MARSHAL'S RETURN.

Northern District of California.

I hereby certify and return, that on the 10th day of Sept., 1915, I received the within summons and herewith return the same unexecuted as to the defendant, The Aetna Insurance Company, a corporation.

J. B. HOLOHAN,
United States Marshal.
By Lawrence J. Conlon,
Deputy United States Marshal.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed summons on the therein-named The Hartford Fire Insurance Company, a corpn., by handing to and leaving a true and correct copy thereof, together with copy complaint attached thereto, with Dixwell Hewitt, General Agent The Hartford Fire Insurance Company, a corpn., personally at San Francisco, in said District, on the 10th day of September, A. D. 1915.

J. B. HOLOHAN,
U. S. Marshal.
By Lawrence J. Conlon,
Deputy. [22]

United States Marshal's Office,
Northern District of California.

I hereby certify, that I received the within writ on the 10th day of Sept., 1915, and personally served the same on the 10th day of Sept., 1915, upon The Union Marine Insurance Company, Limited, a corpn., by delivering to, and leaving with C. Wm. Henderson, Marine Underwriter for The Union Insurance Company, Limited, a corpn. Said defendent named therein personally, at the City and County of San Francisco, in said District, a

certified copy thereof, together with a copy of the Complaint, attached thereto.

J. B. HOLOHAN,
U. S. Marshal.
By Lawrence J. Conlon,
Office Deputy.

San Francisco, Sept. 10th, 1915.

[Endorsed]: Filed Sep. 27, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 15,930.

THE SACRAMENTO STOCKTON STEAMSHIP COMPANY, a Corporation,
Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,
Defendants.

Defendants' Demurrer to Complaint.

Now comes the above-named defendants, The Aetna Insurance Company, The Union Marine Insurance Company, Limited, and The Hartford Fire Insurance Company, and each of them, and do each of them demur to the complaint of plaintiff on file

in the above-entitled action, on the following grounds, to wit:

I. That said complaint does not state facts sufficient to constitute a cause of action.

II. That said complaint does not state facts sufficient to constitute a cause of action against defendant, The Aetna Insurance Company, a corporation.

III. That said complaint does not state facts sufficient to constitute a cause of action against defendant The Union Marine Insurance Company, Limited, a corporation.

IV. That said complaint does not state facts sufficient [24] to constitute a cause of action against defendant The Hartford Fire Insurance Company, a corporation.

V. That said complaint is uncertain in the following particulars, to wit:

1. That whereas it is alleged in paragraph IX of said complaint that on or about the 15th day of April, 1915, the said steamer "Monarch" was wrecked and totally lost by perils in "said policy" named and thereby insured against, it does not appear in said complaint, nor can it be ascertained therefrom, what policy is referred to or intended to be referred to as "said policy," three policies of insurance having been theretofore mentioned in paragraphs VI, VII and VIII, respectively, of said complaint, and being annexed thereto as Exhibits "A," "B" and "C," respectively.

2. That whereas it is alleged in paragraph IX of said complaint that on or about the 15th day of

April, 1916, the said steamer "Monarch" was wrecked and totally lost by perils in said policy named and thereby insured against, it does not appear in said complaint, nor can it be ascertained therefrom, by which, if any, of the several perils or causes of loss or damage enumerated in each of the three policies of insurance mentioned in paragraphs VI, VII and VIII, respectively, of said complaint, and annexed thereto as Exhibits "A," "B" and "C," respectively, said steamer "Monarch" is claimed to have been wrecked and totally lost.

VI. That said complaint is ambiguous in each of the respects and particulars in which it is hereinabove in paragraph V alleged to be uncertain.

VII. That said complaint is unintelligible in each of the respects and particulars in which it is hereinabove in [25] paragraph V alleged to be uncertain.

WHEREFORE, said defendants, The Aetna Insurance Company, The Union Marine Insurance Company, Limited, and The Hartford Fire Insurance Company, and each of them, pray that plaintiff take nothing by its said complaint, and that they and each of them be hence dismissed with their costs.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Attorneys for said Defendants.

We hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law and

that the same is not interposed for delay.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Attorneys for said Defendants.

Service of the within demurrer and receipt of a copy is hereby admitted this 23 day of October, 1915.

NATHAN H. FRANK,
Atty. for Plff.

[Endorsed]: Filed Oct. 25, 1915. Walter B. Maling, Clerk. [26]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 15,930.

THE SACRAMENTO STOCKTON STEAMSHIP COMPANY, a Corporation,
Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,
Defendants.

Notice of Motion and Motion.

To the Plaintiff in the Above-entitled Action and to Nathan H. Frank, Esq., and Irving H. Frank, Esq., Its Attorneys:

YOU AND EACH OF YOU will please take notice that the defendants, The Aetna Insurance Company, The Union Marine Insurance Company, Limited, and The Hartford Fire Insurance Company, and each of them, hereby move, and on Monday, the first day of November, 1915, at the opening of court on that day, or as soon thereafter as counsel can be heard, said defendants, and each of them, will move this Honorable Court, at the courtroom thereof, in the United States Courthouse, in the Postoffice Building, at the northeast corner of Seventh and Mission Streets, in the City of San Francisco, State of California, for an order requiring plaintiff to make its complaint in this action more definite and certain in the following particulars, to wit:

1. That plaintiff be required to state which, if any, of the three policies of insurance mentioned in paragraphs VI, VII and VIII, respectively, of its complaint, and annexed thereto as Exhibits "A," "B" and "C," respectively, is referred to as "said policy" in paragraph IX of said complaint.

2. That plaintiff be required to state with reference to paragraph IX of its complaint, wherein it is alleged that on or [26a] about the 15th day of April, 1915, the said steamer "Monarch" was wrecked and totally lost by perils in said policy named and thereby insured against, by which, if any, of the several perils of causes of loss or damage enumerated in each of the three policies of insurance mentioned in paragraphs VI, VII, VIII, respectively, of its complaint, and annexed thereto

as Exhibits "A," "B" and "C," respectively, plaintiff claims said steamship to have been wrecked and totally lost.

Said motion will be made upon the ground that said complaint is indefinite and uncertain in the particulars hereinabove specified, and upon the hearing of said motion said defendants and each of them will rely upon and use said complaint and this notice of motion and motion.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Attorneys for said Defendants.

Service of the within notice of motion, etc., and receipt of a copy is hereby admitted this 23d day of October, 1915.

NATHAN H. FRANK,
Atty. for Plff.

[Endorsed]: Filed Oct. 25, 1915. Walter B. Maling, Clerk. [26b]

At a stated term, to wit, the November term, A. D. 1915, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Monday, the 1st day of November, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,930.

THE SACRAMENTO STOCKTON S. S. CO.

vs.

THE AETNA INSURANCE COMPANY, et al.

(Order Denying Motion to Make Complaint More Certain, etc.)

Defendants' demurrer to complaint and motion to make complaint more certain, came on to be heard and after arguments, being submitted and fully considered, it is ordered that said motion be and the same is hereby denied and that said demurrer be and the same is hereby overruled. [27]

In the United States District Court for the Northern District of California, Second Division.

THE SACRAMENTO STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants.

Answer.

Come now the above-named defendants, and each of them, and, in answer to the allegations of the

complaint herein, admit, deny and allege, as follows:

I.

Defendants admit the allegations of paragraph I of said complaint.

II.

Defendants admit the allegations of paragraph II of said complaint.

III.

Defendants admit the allegations of paragraph III of said complaint.

IV.

Defendants admit the allegations of paragraph IV of said complaint. [28]

V.

Answering unto paragraph V of said complaint, defendants have no information or belief upon the subject sufficient to enable them to answer the allegations therein contained, and placing their denials on that ground, deny that at all or any of the times therein in said complaint mentioned, the said Sacramento Stockton Steamship Company was the owner of the steamer therein after referred to and called, or called, the "Monarch," together with her body, or tackle, or apparel, or boats, or other furniture.

VI.

Defendants admit the allegations of paragraph VI of said complaint.

VII.

Defendants admit the allegations of paragraph VII of said complaint.

VIII.

Defendants admit the allegations of paragraph VIII of said complaint.

IX.

Answering paragraph IX of said complaint, said defendants admit that on or about the 15th day of April, 1915, the said steamer "Monarch" was wrecked; allege that they have no information upon the subject sufficient to enable them to answer as to whether said vessel was or became a total loss, and therefore deny that said vessel was or became a total loss, as alleged in said paragraph IX of said complaint, or otherwise; said defendants deny that on or about the 15th day of April, 1915, or at any time, or at all, said steamer was wrecked and totally, or otherwise, lost, or wrecked or totally, or otherwise, lost, by perils, or by any peril, in said policies, or in any of said policies, named and thereby insured against, or by perils, or by any peril, in said policies, or in any of said policies, named or thereby insured against. [29]

X.

Answering said paragraph X of said complaint, said defendants admit that on or about the third day of June, 1915, plaintiff served a purported notice of abandonment upon the defendant herein, Aetna Insurance Company, which said purported notice of abandonment was in the words and figures set forth in said paragraph X of said complaint; said defendants deny that said purported notice of abandonment was, or is, a valid notice of abandonment, or that at the time of serving same, as afore-

said, or ever or at all, said plaintiff was entitled to abandon said steamer "Monarch," or its right, title or interest therein to the said defendant, Aetna Insurance Company.

XI.

Answering paragraph XI of said complaint, said defendants admit that in reply to said purported notice of abandonment mentioned in paragraph X hereof, said Aetna Insurance Company did, on the eighth day of June, 1915, serve upon plaintiff a letter, a correct copy of which is set forth in paragraph XI of said complaint. Said defendants deny that in reply to said purported notice of abandonment set forth in paragraph X of said complaint, the said defendant, Aetna Insurance Company, did, on the eighth day of June, 1915, or ever or at all, serve upon plaintiff its refusal to accept said or any abandonment, and assigned its reason therefor in words and figures, or words or figures, as set forth in said paragraph XI of said complaint, or that in reply to said purported notice of abandonment set forth in paragraph X in said complaint, or otherwise, the said defendant, Aetna Insurance [30] Company did, on the eighth day of June, 1915, or at any time or at all, serve upon said plaintiff its refusal to accept said or any abandonment, or assign its reason therefor in words and figures, or in words or figures as set forth in said paragraph.

Said defendants admit that in and by said letter said defendant, Aetna Insurance Company, did, on the eighth day of June, 1915, notify plaintiff that it refused to accept its purported abandonment referred to in paragraph X hereof, but said defend-

ants deny that in and by said letter said defendant, Aetna Insurance Company intended to state, or that it in fact stated, to said plaintiff, or intended to advise, or that it in fact advised, said plaintiff of its reasons for refusing to accept said purported abandonment; that said last-mentioned letter contained the following statement, to wit:

> "Our policy No. 3563 was rescinded and voided by the unseaworthiness of said vessel which caused her loss,"

but that said letter did not contain, nor did said defendant in any way make to plaintiff, any statement to the effect that said rescission or said voiding of said policy by the unseaworthiness of said vessel which caused her loss was the reason, or was one of the reasons, why said defendant refused to accept the said purported abandonment. That on said eighth day of June, 1915, and at the time of the receipt of said letter by said plaintiff, it was well known to said plaintiff that the aforesaid wreck and loss of said steamer "Monarch" was not occasioned by any of the perils named in the policy of insurance referred to in paragraph VI of said complaint, or thereby insured against, and said plaintiff then and there well knew that by reason thereof and for other and additional reasons, [31] it was not entitled to abandon its interest in said "Monarch" to said defendant, Aetna Insurance Company. That the statement in said letter that

> "Our policy No. 3563 was rescinded and voided by the unseaworthiness of said vessel which caused her loss,"

was not intended to be, and was not in fact, inserted in said letter by defendant as stating the reason for the refusal of said defendant, Aetna Insurance Company, to accept said purported abandonment, nor as the sole reason therefor, nor even as one of the reasons therefor but was inserted in said letter for the sole purpose of calling the fact referred to to the attention of said plaintiff, all of which was at all times well known to and understood by plaintiff. That plaintiff was not entitled to any notice from said defendant, Aetna Insuranec Company, whatsoever, respecting its purported notice of abandonment, nor did said plaintiff in any way rely upon or predicate any action whatsoever upon receipt of the said letter from said defendant, Aetna Insurance Company.

XII.

Answering paragraph XII of said complaint, said defendants admit that on or about the third day of June, 1915, plaintiff served a purported notice of abandonment upon the defendant herein, Union Marine Insurance Company, which said purported notice of abandonment was in the words and figures set forth in said paragraph XII of said complaint; said defendants deny that said purported notice of abandonment was, or is, a valid notice of abandonment, or that at the time of serving same, as aforesaid, or ever or at all, said plaintiff was entitled to abandon said steamer "Monarch," or its right, title or interest therein to the said defendant, Union Marine [32] Insurance Company.

XIII.

Answering paragraph XIII of said complaint, said defendants admit that in reply to said purported notice of abandonment mentioned in paragraph XIII hereof, said Union Marine Insurance Company did, on the fifth day of June, 1915, serve upon plaintiff a letter, a correct copy of which is set forth in paragraph XIII of said complaint. Said defendants deny that in reply to said purported notice of abandonment set forth in paragraph XII of said complaint, the said defendant, Union Marine Insurance Company, did, on the fifth day of June, 1915, or ever or at all, serve upon plaintiff its refusal to accept said or any abandonment, and assigned its reason therefor in words and figures, or words or figures, as set forth in said paragraph XIII of said complaint, or that in reply to said purported notice of abandonment set forth in paragraph XII in said complaint, or otherwise, the said defendant, Union Marine Insurance Company, did, on the fifth day of June, 1915, or at any time or at all, serve upon said plaintiff its refusal to accept said or any abandonment, or assign its reason therefor in words and figures, or in words or figures as set forth in said paragraph.

Said defendants admit that in and by said letter said defendant, Union Marine Insurance Company, did, on the fifth day of June, 1915, notify plaintiff that it refused to accept its purported abandonment referred to in paragraph XII hereof, but said defendants deny that in and by said letter said defendant, Union Marine Insurance Company, intended to

state, or that it in fact stated, to said plaintiff, or intended to advise, or that it in fact advised, said plaintiff of its [33] reason for refusing to accept said purported abandonment; that said last-mentioned letter contained the following statement, to wit:

> "Our policy No. 709 was rescinded and voided by the unseaworthiness of said vessel which caused her loss,"

but that said letter did not contain, nor did said defendant in any way make to plaintiff, any statement to the effect that said rescission or said voiding of said policy by the unseaworthiness of said vessel which caused her loss was the reason, or was one of the reasons, why said defendant refused to accept the said purported abandonment. That on said fifth day of June, 1915, and at the time of the receipt of said letter by said plaintiff, it was well known to said plaintiff that the aforesaid wreck and loss of said steamer "Monarch" was not occasioned by any of the perils named in the policy of insurance referred to in paragraph VII of said complaint, or thereby insured against, and said plaintiff then and there well knew that by reason thereof and for other and additional reasons it was not entitled to abandon its interest in said "Monarch" to said defendant, Union Marine Insurance Company. That the statement in said letter that

> "Our policy No. 709 was rescinded and voided by the unseaworthiness of said vessel which caused her loss,"

was not intended to be, and was not in fact, inserted in said letter by defendant as stating the reason for the refusal of said defendant, Union Marine Insurance Company, to accept said purported abandonment, nor as the sole reason therefor, nor even as one of the reasons therefor, but was inserted in said letter for the sole purpose of calling the fact referred to to the attention of said plaintiff, all of which was at all times [34] well known to and understood by plaintiff. That plaintiff was not entitled to any notice from said defendant, Union Marine Insurance Company, whatsoever, respecting its purported notice of abandonment, nor did said plaintiff in any way rely upon or predicate any action whatsoever upon receipt of the said letter from said defendant, Union Marine Insurance Company.

XIV.

Answering paragraph XIV of said complaint, said defendants admit that on or about the third day of June, 1915, plaintiff served a purported notice of abandonment upon the defendant herein, Hartford Fire Insurance Company, which said purported notice of abandonment was in the words and figures set forth in said paragraph XIV of said complaint; said defendants deny that said purported notice of abandonment was, or is, a valid notice of abandonment, or that at the time of serving same, as aforesaid, or ever, or at all, said plaintiff was entitled to abandon said steamer "Monarch," or its right, title or interest therein to the said defendant, Hartford Fire Insurance Company.

XV.

Answering paragraph XV of said complaint, said defendants admit that in reply to said purported notice of abandonment mentioned in paragraph XV thereof, said Hartford Fire Insurance Company did, on the ninth day of June, 1915, serve upon plaintiff a letter, a correct copy of which is set forth in paragraph XV of said complaint. Said defendants deny that in reply to said purported notice of abandonment set forth in paragraph XV of said complaint, the said defendant, Hartford Fire Insurance Company, did, on the ninth day of June, 1915, or ever, or at all, serve upon plaintiff its refusal to [35] accept said or any abandonment, and assigned its reason therefor in words and figures, or words or figures, as set forth in said paragraph XV of said complaint, or that in reply to said purported notice of abandonment set forth in paragraph XV of said complaint, or otherwise, the said defendant, Hartford Fire Insurance Company, did, on the ninth day of June, 1915, or at any time, or at all, serve upon said plaintiff its refusal to accept said or any abandonment, or assign its reason therefor in words and figures, or in words or figures, as set forth in said paragraph.

Said defendants admit that in and by said letter said defendant, Hartford Fire Insurance Company, did, on the ninth day of June, 1915, notify plaintiff that it refused to accept its purported abandonment referred to in paragraph XV hereof, but said defendants deny that in and by said letter said defendant, Hartford Fire Insurance Company, in-

tended to state, or that it in fact stated, to said plaintiff, or intended to advise, or that it in fact advised, said plaintiff of its reasons for refusing to accept said purported abandonment; that said last mentioned letter contained the following statement, to wit:

> "Our policy #40,035 was rescinded and voided by the unseaworthiness of said vessel which caused her loss."

but that said letter did not contain, nor did said defendant in any way make to plaintiff, any statement to the effect that said rescission or said voiding of said policy by the unseaworthiness of said vessel, which caused her loss, was the reason, or was one of the reasons, why said defendant refused to accept the said purported abandonment. That on said ninth day of June, 1915, and at the time of the receipt of said [36] letter by plaintiff, it was well known to said plaintiff that the aforesaid wreck and loss of said steamer "Monarch" was not occasioned by any of the perils named in the policy of insurance referred to in paragraph VIII of said complaint, or thereby insured against, and said plaintiff then and there well knew that by reason thereof and for other and additional reasons it was not entitled to abandon its interest in said "Monarch" to said defendant, Hartford Fire Insurance Company. That the statement in said letter that

> "Our policy #40,035 was rescinded and voided by the unseaworthiness of said vessel which caused her loss,"

was not intended to be, and was not in fact, inserted in said letter by defendant as stating the reason for

the refusal of said defendant, Hartford Fire Insurance Company, to accept said purported abandonment, nor as the sole reason therefor, nor even as one of the reasons therefor, but was inserted in said letter for the sole purpose of calling the fact referred to to the attention of said plaintiff, all of which was at all times well known to and understood by plaintiff. That plaintiff was not entitled to any notice from said defendant, Hartford Fire Insurance Company, whatsoever, respecting its purported notice of abandonment, nor did said plaintiff in any way rely upon or predicate any action whatsoever upon receipt of the said letter from said defendant, Hartford Fire Insurance Company.

XVI.

Answering paragraph XVI of said complaint, said defendants deny that it is in and by, or in or by, the terms, or any of the terms, of each and all of said policies of insurance, or of any of said policies of insurance, referred to in said [37] complaint, provided that the liability of said defendants, or of any of them, under said policies, or any of them, including liability for constructive total loss, or otherwise, is to be determined according to English law and practice, or to English law or practice; admits that it is English law and practice that in a time policy of insurance there is no applied warranty that a ship shall be seaworthy at any stage of the adventure, but alleges in this behalf that it is also the English law and practice, with respect to such time policy, that where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the

insurer is not liable for any loss attributable to such unseaworthiness.

XVII.

Answering paragraph XVII of said complaint, said defendants deny that the plaintiff has duly or otherwise performed all of the conditions in each and all, or in each or all, or in any, of the policies of insurance referred to in said complaint, on its part to be performed.

XVIII.

Answering paragraph XVIII of the complaint, said defendants admit the allegations thereof.

And for a further, separate and distinct answer and defense to the complaint herein, and to the alleged cause of action, or causes of action, contained therein, defendants allege:

Allege that at the time of the wrecking and loss of the said steamer "Monarch," referred to in said complaint, said [38] "Monarch" was unseaworthy in that the seams and the caulking in the seams of the hull of said "Monarch" were insufficient to withstand the seas, which it was reasonable to expect said vessel would encounter upon its voyage, and which were encountered upon said voyage; that defendants are advised and believe and therefore allege that said vessel was unseaworthy as aforesaid with the privity of the plaintiff, and the said unseaworthiness of said vessel was known to plaintiff, and that nevertheless the said vessel was sent on its voyage by the said plaintiff in said unseaworthy condition; that by reason of said unseaworthy condition of said vessel as aforesaid, and not otherwise, said vessel was

wrecked and lost. That thereafter and on or about the 3d day of June, 1915, said defendants and each of them rescinded said policies referred to in said complaint, and each of them respectively, because of the unseaworthiness of said vessel as aforesaid, and gave to said plaintiff due notice that said policies, and each of them, were so rescinded.

And for a second, further, separate and distinct answer and defense to said complaint, and to the alleged cause of action, or causes of action, contained therein, defendants allege:

That it is in and by the terms of each and all of the policies of insurance referred to in the complaint herein, among other things, provided that claims, if any, including claim for constructive total loss, are to be adjusted according to English law and practice; that it is the English law and practice that in a time policy of insurance, notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, or, where information is of a doubtful character, the assured is entitled to a reasonable time to make inquiry;

That said steamer "Monarch" was wrecked and lost, but, [39] as defendants are informed and believe and therefore allege, not totally lost, on or about the 15th day of April, 1915; that plaintiff had reliable information of the said loss immediately after the occurrence thereof;

That no notice or notices of abandonment, or purported notice or purported notices of abandonment, was or were served upon defendants, or any of them, by plaintiff, except as alleged in said complaint; that

the purported notices of abandonment referred to in paragraphs X, XII and XIV of the complaint herein, were served upon the defendants herein on June 13th, 1915, and not prior thereto;

That said last-mentioned notices of abandonment were not given with reasonable diligence by said plaintiff to said defendants, or any of them, after the receipt by said plaintiff of reliable information of the said loss; that the plaintiff's information as to said loss was not of a doubtful character, but that in any event, the time elapsed beween the receipt of said information and the giving of said purported notices of abandonment greatly exceeded what would have been a reasonable time for said plaintiff to make inquiries as to said loss.

And for a third, further, separate and distinct answer and defense to said complaint, and to the alleged cause of action, or causes of action, contained therein, defendants allege:

That the wrecking and loss of said steamer "Monarch" was not caused by the perils, or any of the perils in said [40] policies, or in any of said policies, named or thereby insured against; that if said wrecking or loss was proximately caused by the perils in said policies, or any of them, named and thereby insured against, or by any peril in said policies, or any of them, named or thereby insured against, nevertheless the said wrecking and loss were remotely caused thereby, and would not have occurred but for a peril excepted in the said policies of insurance and in each of said policies.

And for a fourth, further, separate and distinct

answer and defense to said complaint, and to the alleged cause of action, or causes of action, contained therein, defendants allege:

That the purported notices of abandonment referred to in paragraphs X, XII and XIV of said complaint were, and each of them was, insufficient, in that they were not, nor was any of them, explicit, nor did they, nor did any of them, specify the particular cause of the alleged abandonment, nor did they, nor did any of them, state enough to show that there existed probable cause for said alleged abandonment.

WHEREFORE, defendants pray that plaintiff take nothing against said defendants, or any of them, by its said complaint, and that said defendants, and each of them, have judgment against plaintiff for their and each of their respective costs herein incurred.

McCUTCHEN, OLNEY & WILLARD,
Attorneys for Defendants. [41]

United States of America,
Northern District of California,—ss.

Ira A. Campbell, being first duly sworn, deposes and says:

That he is a member of the firm of McCutchen, Olney & Willard, attorneys of record for the defendants in the above-entitled action; that he has charge of the defense of said action in behalf of said firm for said defendants;

That all of the officers of said defendant corporations, and of each of said defendant corporations, are absent from the county where said attorneys

have their office, to wit, are absent from the City and County of San Francisco, State of California, and are absent from the State of California; that therefore affiant makes this affidavit for and on behalf of said defendants;

That affiant has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

IRA A. CAMPBELL,

Subscribed and sworn to before me this 15th day of December, 1915.

[Notarial Seal] WM. D. PAGE,
Notary Public in and for the City and County of San Francisco, State of California. [42]

Service of the within answer and receipt of a copy is hereby admitted this 15th day of December, 1915.

NATHAN H. FRANK,
Attorney for Plaintiff.

[Endorsed]: Filed Dec. 15, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [43]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

THE SACRAMENTO STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants.

Verdict.

We, the jury, find in favor of the plaintiff and assess the damages against the defendants as follows, namely: Against the said defendant, The Aetna Insurance Company, a corporation, in the sum of Ten thousand five hundred forty-six & 38/100 ($10,546.38) Dollars; against the said defendant, The Union Marine Insurance Company, Limited, a corporation, in the sum of three thousand nine hundred fifty-four & 90/100 ($3,954.90) Dollars, and against the said defendant, The Hartford Fire Insurance Company, a corporation, in the sum of six thousand three hundred twenty-seven 83/100 ($6,327.83) Dollars.

N. A. JUDD,

Foreman.

[Endorsed]: Filed June 16, 1916. Walter B. Maling, Clerk. [44]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

THE SACRAMENTO STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants.

Judgment on Verdict.

This cause having come on regularly for trial upon the 15th day of June, 1916, being a day in the March 1916 Term of said Court, before the Court and a jury of twelve men duly empaneled and sworn to try the issues joined herein; Nathan H. Frank, Esq., appearing as attorney for plaintiff and Ira A. Campbell, Esq., appearing as attorney for defendants; and the trial having been proceeded with on the 16th day of June in said year and term, and oral and documentary evidence upon behalf of the respective parties having been introduced and closed and the cause having been

submitted to the jury, with instructions by the Court to find in favor of the plaintiff, and the jury having subsequently rendered the following verdict, which was ordered recorded, namely: "We, the jury, find in favor of the plaintiff and assess the damages against the defendants as follows, namely: Against the said defendant, The Aetna Insurance Company, a corporation, in the sum of Ten thousand five hundred forty-six & 38/100 ($10,546.38) Dollars; against the said defendant, The Union Marine Insurance Company, Limited, a corporation, in the sum of Three thousand nine hundred fifty-four 90/100 ($3954.90) Dollars, and against the said defendant, The Hartford Fire [45] Insurance Company, a corporation, in the sum of Six thousand three hundred twenty--seven 83/100 ($6327.83) Dollars. N. A. Judd, Foreman," and the Court having ordered, that judgment be entered in accordance with said verdict and for costs:

Now therefore, by virtue of the law and by reason of the premises aforesaid, it is ordered by the Court, that The Sacramento Stockton Steamship Company, a corporation, plaintiff, do have and recover of and from The Aetna Insurance Company, a corporation, defendant, the sum of Ten thousand five hundred forty-six and 38/100 ($10,546.38) Dollars; and that said plaintiff do have and recover of and from The Union Marine Insurance Company, Limited, a corporation, defendant, the sum of Three thousand nine hundred fifty-four and 90/100 ($3954.90) Dollars; and that said plaintiff do have and recover of and from The Hartford Fire Insurance Company, a cor-

poration, defendant the sum of Six thousand three hundred twenty-seven and 83/100 ($6327.83) together with plaintiffs costs herein expended taxed at $57.00.

Judgment entered June 16, 1916.

WALTER B. MALING,
Clerk.

A True Copy.

Attest;—[Seal] WALTER B. MALING, Clerk.

[Endorsed]: Filed June 16, 1916. Walter B. Maling, Clerk. [46]

In the District Court of the United States for the Northern District of California.

No. 15,930.

THE SACRAMENTO STOCKTON S. S. CO.,

vs.

THE AETNA INS. CO. a Corp., et al.

(Clerk's Certificate to Judgment-roll.)

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

Attest my hand and the seal of said District Court, this 16th day of June, 1916.

[Seal] WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Judgment-roll. Filed June 16, 1916. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Recorded Judgment Register No. 14, page 258. [47]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Engrossed Bill of Exceptions.

BE IT REMEMBERED that on the 15th day of June, 1916, at a stated term of the District Court of the United States, for the Northern District of California, the above-entitled cause came on regularly for trial before the Honorable William C. Van Fleet, Judge of the said court, the jury having been duly impanelled, Nathan H. Frank, Esq., appearing as attorney for the plaintiff and Ira A.

Campbell, Esq., appearing as attorney for the defendants.

And thereupon the following proceedings were had:

Mr. Frank made the following opening statement:

> "I do not think it will be necessary for me to make any extended statement to you, gentlemen, [48] "in this case. The issues that will be presented to the jury are very narrow indeed, if indeed there is anything at all in the end for the jury to pass upon. The case in a few words is simply this, that this steamer was insured by these insurance companies; that is all admitted; she was wrecked and she was lost, and claim was made upon the insurance companies to pay under their policies, and they made a denial of that upon the alleged ground that she was unseaworthy, and that the unseaworthiness was the cause of the loss. So far as the issues of fact are concerned I think that will be the only thing that will reach you gentlemen, if indeed that reaches you at all."

The COURT.—That is the question as to her seaworthiness?

Mr. FRANK.—That will be the only issue of fact, as I view the case, if it becomes an issue of fact at all in the case.

The COURT.—They deny your ownership, I suppose?

Mr. FRANK.—Yes.

Mr. CAMPBELL.—As long as they say they own the vessel, that is all right.

Mr. FRANK.—Here is the bill of sale.

Mr. CAMPBELL.—We will admit that.

Mr. FRANK.—Then the ownership is admitted.

Mr. Frank offered in evidence the insurance policy of the Union Marine Insurance Company, Ltd., in favor of the Sacramento-Stockton Steamship Company. It was received in evidence and marked Plaintiff's Exhibit No. 1 and is hereunto annexed marked Exhibit No. 1.

Mr. Frank then offered in evidence the insurance policy of the Aetna Insurance Company in favor of the Sacramento-Stockton Steamship Company. It was received in evidence and marked Plaintiff's Exhibit No. 2 and is hereunto annexed, marked Exhibit No. 2.

Mr. Frank then offered in evidence the insurance policy of the Hartford Fire Insurance Company in favor of the Sacramento-Stockton Steamship Company. It was received in evidence and marked Plaintiff's Exhibit No. 3 and is hereunto annexed, marked Exhibit No. 3.

Testimony of George Pavesich, for Plaintiff.

GEORGE PAVESICH was then called for plaintiff, was sworn and testified as follows:

I am the master of one of the Red Stack tugboats, [49] the "Reliance," and was master of her in April, 1915. At that time I was sent up the bay to see what I could do with the steamer "Monarch." I found the "Monarch" off Rodeo, San

(Testimony of George Pavesich.)

Pablo Bay, partly under water. We towed her up Carquinez Straits off Vallejo and beached her there. We got through with her about six o'clock, put an anchor out and fastened two lines, and about eleven o'clock that evening she slid off. We made a search for her next morning. That night we couldn't see anything of her. She slid off and sunk out of sight and that is the last I have ever seen of her.

On cross-examination, Mr. Pavesich testified as follows:

When I first took hold of her she was partially sunk, water-logged, just the top of the upper house was sticking out of water. We took her ashore at the entrance of Napa Creek. She slid off during the night and disappeared. I don't know the exact time we got up to Vallejo but it was somewhere around four, five or six o'clock in the afternoon. I beached her, bow on, and put two lines to her bow and [50] an anchor on the bow on the beach. I remained there with my tug that night, tying close up to one of the Government floats. I couldn't say the exact time, but it must have been somewhere around ten or eleven that I saw her slide off. I had towed her from off Rodeo to the entrance of Napa Creek, a distance of about two miles. I made no soundings to ascertain whether she had drifted away or sunk. I could not see her on the bottom when we looked for her next morning. The water is deep there, about thirteen fathoms. I couldn't see anything of her.

(Testimony of George Pavesich.)

On redirect examination Mr. Pavesich testified as follows:

I have been up and down there ever since that time. I have never seen any sign of her or any wreckage anywhere in the neighborhood. There was nobody on board when she slid off. There were two or three men aboard when I picked her up. My anchor was lost. It was fastened to the stem when I dropped the anchor overboard and it was fastened to the shore. I dropped the anchor ahead of her in the water. I had pulled her on the beach as high as I could and then I put this anchor off my boat and I dropped the anchor to hold it. I can't say whether she parted the line but she took the whole business off when she slid off.

Thereupon the plaintiff rested.

Mr. Campbell then moved for a nonsuit upon the following ground:

> "That the plaintiff has not shown a loss which is covered by the policies. As I said before, the policies insure this vessel against loss or damage sustained through collision with another ship or vessel, or with wharves, piers, stages or similar structures, if amounting to $750, and also insured the vessel against loss or damage caused by fire. Our motion is based [51] upon the ground that there is no proof here of a loss within the perils insured against by the policies."

Thereupon counsel proceeded to argue the motion, at the conclusion of which the Court denied

(Testimony of C. Moltzen.)

the motion for a nonsuit, to which ruling defendants excepted and defendants now assign said exception to said ruling as defendants' Exception No. 1.

Testimony of C. Moltzen, for Defendants.

C. MOLTZEN was then called for the defendants, was sworn and testified as follows:

I am a ship's carpenter and have been engaged in that business for nine years. I was a member of the crew of the "Monarch" at the time she sank in the Sacramento River at Carquinez Straits. I was doing carpenter work on board that vessel.

Mr. CAMPBELL.—Q. Did she fill with water that night while she was going up the river?

Mr. FRANK.—I am perfectly willing that this whole transaction come out, but I am in a position where in order to preserve the attitude which I have been arguing all day that I must object to any evidence upon the part of the defendant regarding the cause of the sinking; I therefore object to it on that ground.

The COURT.—I am inclined to the view, Mr. Campbell, that you are precluded from going into that.

Mr. CAMPBELL.—What is the ground of the objection to the question, please? Do I understand the Court's ruling is that I am now even forbidden to show that there was a loss by unseaworthiness?

The COURT.—Yes.

Mr. FRANK.—Not unseaworthiness — unsea-

(Testimony of C. Moltzen.)

worthiness is [52] another question—yes I also object—

The COURT.—I wondered if you had changed your position. I wanted to hear what your objection was.

Mr. FRANK.—Certainly, because the allegation of the complaint is that it is subject to the law of England and under the law of England there is no warranty of seaworthiness, and they admit that is the law of England in their answer. [53] Under those circumstances the question of unseaworthiness is immaterial.

The COURT.—On what ground?

Mr. FRANK.—Upon the ground that this testimony is immaterial and incompetent under the issues made in this case.

The COURT.—That is the ground, I supposed, you had made before, but it seems you did not. I am inclined to sustain that, Mr. Campbell.

Mr. CAMPBELL.—If your Honor, please, it seems to me that the Court's view is hardly correct for this reason: that in taking the view which you have already expressed on the motion for the nonsuit, we still are in a position where we can show that this vessel was lost by unseaworthiness; but if we show that this vessel was lost by unseaworthiness, it will show that this vessel was not lost by a peril that was insured against in the policy; it may be that under the English law there is no implied warranty of seaworthiness in a time policy; still the fact of that state of the law should not preclude

(Testimony of C. Moltzen.)

me at this time from showing under the pleadings that the cause of this loss was the unseaworthiness of that vessel—that that was not a peril insured against.

The COURT.—It seems to me that in the shape the transaction is disclosed of taken by the pleadings, that that defense is not open to you.

Mr. CAMPBELL.—In the view which your Honor has accepted from Mr. Frank that defense may not be open to me to show that the policy itself was voided by the unseaworthiness.

The COURT.—What is the difference?

Mr. CAMPBELL.—The difference is this, that the policy insured against certain perils and certain perils only. Now, you have said that the burden is not upon these people by denying the nonsuit, to show that that vessel was lost by a peril [54] insured against, but you say because I wrote in my letter that the vessel was lost by unseaworthiness—

The COURT.—Yes.

Mr. CAMPBELL.—If that be true and the argument that counsel made was sound then the only thing that I can show is that vessel was lost by unseaworthiness, and if I do show that vessel was lost by unseaworthiness, then I say I prove that vessel was not lost by a peril insured against because she was only insured against a loss by collision.

Mr. FRANK.—My reply to that is, there is a further issue in the complaint and admitted that there is no warranty of seaworthiness under this

(Testimony of C. Moltzen.)

policy, and if there is no warranty of seaworthiness in this policy it is immaterial whether she is seaworth or unseaworthy.

The COURT.—My ruling on the motion for a nonsuit also included the view that your construction of these policies was untenable. I could not construe the effect of this rider in view of the face of the policies themselves as limiting their scope in the manner that you claim.

The Court thereupon sustained plaintiff's said objection, to which ruling defendants excepted, and defendants now assign said exception to said ruling as Defendants' Exception No. 2.

Mr. CAMPBELL.—I offer to prove by this witness that she did fill with water that night while she was going up the river, and I take an exception to the Court's refusal to let me make that showing.

Mr. CAMPBELL.—Q. Mr. Moltzen, where did the water which filled that vessel as it went up the river that night come into the vessel?

A. Through her seams on the starboard side of the [55] boiler. Those seams opened probably twenty or thirty feet, as far as I could see in the hold. I don't know how fast it filled. When I came down there was a good deal of water in there and I think we ran a half an hour or more before we landed at Selby's. We landed at Selby's about eleven at night. In the morning the "Monarch" was lying on her side. I saw part of her upper works.

Mr. CAMPBELL.—Q. I hand you these two

(Testimony of C. Moltzen.)

photographs and ask you whether or not they show the "Monarch" as she was the morning after she reached the Selby Dock.

A. Yes, I think that is the way she lay down there.

The COURT.—From what point of view, from the dock?

A. From the dock, yes.

The photographs were then marked Defendants' Exhibits "A" and "B" for identification.

A. She turned over on her side about twenty minutes after we reached the dock. We left San Francisco about half past nine from the Washington Street Dock No. 3. We headed for Sacramento, right up the bay. When we discovered this water coming in through the sides we were above Point Pinole. Quite a few seams opened, probably eight or ten. I don't know how much freeboard she had that night.

The COURT.—Was she loaded?

A. Yes, she had freight on.

Q. Stormy? A. Yes.

Mr. CAMPBELL.—What do you mean by saying it was stormy? A. Windy, wind blowing.

Q. Which way was the wind blowing from?

A. Northwest, I think.

The water was running through the seams just like it would through any ordinary crack in the wood. I don't know [56] how rapidly it filled up the vessel. When I got down into the hold I should judge there was about two feet. When we reached

(Testimony of C. Moltzen.)

Selby's it was up to the deck. The hold approximately is about six feet from the deck to her keel.

Mr. CAMPBELL.—Q. What, in your judgment, was the cause of the water entering this vessel through the seams?

Mr. FRANK.—We make our objection on the ground that it is immaterial and incompetent under any of the issues of this case.

The Court thereupon sustained the plaintiff's said objection, to which order defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 3.

Mr. CAMPBELL.—I offer to prove by this witness that in his judgment the cause of the water entering through the seams of that vessel was her unseaworthiness?

Q. How long did you say you had been a ship carpenter? A. Nine years.

Mr. CAMPBELL.—I further offer to prove by this witness on the whole question that the cause of the water entering the ship's seams was not through collision with any ship or vessel, or with any wharf, pier, stage or similar structure, and ask an exception to the Court's refusal to permit me to make that proof.

Mr FRANK.—We object to that line of examination.

The Court thereupon sustained plaintiff's said objection, to which order defendants excepted, and defendants now assign said exception to said ruling as Defendants' Exception No. 4.

(Testimony of C. Moltzen.)

Mr. CAMPBELL.—Q. What can you say as to whether or not the vessel was fully loaded that night? Was she fully loaded when she left San Francisco?

A. No, I don't think so. I think she was loaded to about half a cargo or probably a little more, of her capacity. When she was light her freeboard was twelve inches. I don't [57] know what her freeboard was that night. I don't know what her freeboard was when she was fully loaded. I worked on her off and on at Sacramento, small repairs, and that was the first trip I made on her.

On cross-examination the witness testified as follows:

Mr. FRANK.—Do you know whether or not that vessel had been plying back and forth on that line for some length of time before that time?

Mr. CAMPBELL.—I object to that as being immaterial, irrelevant and incompetent.

Mr. FRANK.—That is to show the vessel is seaworthy. Here she goes on one particular trip—if she had been making that trip for months before, back and forth, and no such accident happened, why, the inference is there is some other cause than unseaworthiness, that must have been the cause of this wrecking. That is the purpose of the question.

Mr. CAMPBELL.—I submit that the proof that she has been engaged on certain business does not prove seaworthiness.

The COURT.—No, it might bear on the question of what brought about her condition at this time.

(Testimony of C. Moltzen.)

The Court thereupon overruled defendants' said objection, to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 5.

A. She had been plying back and forth on that line for some length of time before that time.

Mr. FRANK.—Q. Are you familiar with the bay, have you been navigating much upon the bay?

A. Not upon the bay, no.

Q. You don't know, then, about the ordinary and extraordinary condition of weather on the bay.

A. No.

Q. You would not be prepared, then, to say whether [58] or not upon this occasion the weather was ordinary or extraordinary—ordinarily or extraordinarily bad?

A. From what I have seen, it was pretty bad.

Q. It was a bad storm; is that what you mean?

A. Yes.

Mr. CAMPBELL.—How high was the wind blowing, in your judgment?

A. I don't know. I went to bed shortly after we left San Francisco. The chief engineer sent a watchman up to call the second engineer and I slept in the same room as the second engineer, so I dressed and went down with the second engineer at that time and looked at the hold.

Testimony of S. A. Livingston, for Defendants.

Thereafter S. A. LIVINGSTON was called as witness for the defendants and on being sworn testified as follows:

I am the marine underwriter of the Union Marine Insurance Company, one of the defendants in this case. I was in the employ of the Union Marine Insurance Company, at the time the policy of the Union Marine Insurance Company (Plaintiff's Exhibit No. 1) was written.

Mr. CAMPBELL.—Did you at or prior to the time that policy was written have any conversation with Mr. Gormley, the president, and Mr. Cochrane, the manager, of plaintiff corporation as to the risk against which this policy was to cover?

A. I did.

Mr. FRANK.—We object to that on the ground that the policy is the written contract; all previous conversations were merged in it.

The Court thereupon sustained plaintiff's said objection to which order defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 6.

Mr. CAMPBELL.—I offer to prove by this witness that he did have such a conversation. What was said by you and what was said by Mr. Cochrane in such conversation? [59]

Mr. FRANK.—Same objection.

The court thereupon sustained plaintiff's said objection and declined to permit defendants to prove, to which order defendants excepted and defendants

(Testimony of S. A. Livingston.)

now assign said exception to said ruling as defendants' Exception No. 7.

Mr. CAMPBELL.—I offer to prove by this witness that Mr. Cochrane said that the only kind of insurance which they wanted was that covering fire and collision only and that he, Mr. Livingston, the witness, told Mr. Cochrane that the rate for fire and collision insurance only would be 3% whereas if they insured against all risks the premium would be 5%; that Mr. Cochrane said that the only real risks of loss on the bay were those occasioned by fire and collision and therefore they would not pay more than 3% insurance, covering against fire and collision only.

Mr. FRANK.—We object to any testimony on that line, if your honor please.

The court thereupon sustained plaintiff's said objection, to which order defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 8.

Mr. CAMPBELL.—What is the general understanding among those engaged in marine insurance business and shipping business in San Francisco as to whether or not the rider which is endorsed upon all three of the policies in suit supersedes the terms of the policies and alone defines the risks against which the policy insures.

Mr. FRANK.—We object to that upon the grounds already stated and upon the further ground that the witness is not shown to be competent to testify upon such matters.

(Testimony of S. A. Livingston.)

Mr. CAMPBELL.—How long have you been engaged in the insurance business?

A. I have been engaged ten years.

Q. In San Francisco?

A. In San Francisco. [60]

Mr. CAMPBELL.—I now renew my question, if the court please.

The COURT.—Have you any knowledge upon this subject that the question points to?

A. Yes, I have.

The COURT.—What is your objection?

Mr. FRANK.—We object to it on the ground it is immaterial and incompetent; the same objection that I made before.

The court thereupon sustained plaintiff's said objection, to which order defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 9.

Mr. CAMPBELL.—I offer to prove by this witness that it is the general understanding among those engaged in San Francisco and thereabouts that the rider does supersede the terms of the policy and that the rider alone defines the risk against which the policy insures and I take an exception to the refusal of the court to receive the evidence.

Thereupon Mr. Campbell made the following offer:

Mr. CAMPBELL.—I at this time, if the court please, offer to call as witnesses Mr. Ernest Livingston, assistant general agent and underwriter for the Aetna Insurance Company, one of the defend-

(Testimony of S. A. Livingston.)

ants, and Mr. A. W. Follansbee, the marine underwriter for the Fireman's Fund Insurance Company, now present in Court, and offer to prove by those witnesses that the general understanding among those engaged in the insurance and shipping business in San Francisco and thereabouts is that the rider, such as appears on the policies in suit, supersedes the terms of these policies and alone defines the risks against which the policies insure.

The COURT.—You interpose the same objection?

Mr. FRANK.—Yes. [61]

Thereupon the court sustained plaintiff's said objection to which order defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 10.

Testimony of Charles Bjork, for Defendants.

Thereafter CHARLES BJORK was called by the defendants who on being sworn testified as follows:

I was second mate on the steamer "Monarch" from the 13th to the 15th of April, 1915. I was on deck between the time that the "Monarch" left her wharf at San Francisco and her arrival at the dock at Selby's. I discovered water coming into the steamer on her way up the Bay before she reached Selby's. The water was rising in the bottom of the boat between the timbers. I looked down the hatch into the hold of the vessel.

(Testimony of Charles Bjork.)

Mr. CAMPBELL.—I will ask you whether or not, in your judgment—and do not answer this question until counsel objects, if he does—I will ask you whether or not in your judgment the filling of that steamer with water and her subsequent sinking was caused by her unseaworthiness?

Mr. FRANK.—I certainly object to that as immaterial, irrelevant and incompetent.

Mr. CAMPBELL.—How long have you been engaged in the business of sailing on the river?

A. About ten years.

The court thereupon sustained the plaintiff's said objection to which order defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 11.

Mr. CAMPBELL.—I offer to prove by this witness that in his judgment the filling and sinking of the vessel was caused by unseaworthiness. [62]

Testimony of William Fredericks, for Defendants.

WILLIAM FREDERICKS was then called for the defendants and on being sworn testified as follows:

I took pictures of the steamer "Monarch" the morning after she sank at the Selby Dock. I have films of those photographs.

Mr. CAMPBELL.—It was from these films, if your honor please, I had these enlargements made which have been marked for identification.

Mr. FRANK.—As I understand, you were standing on the dock, right over the vessel—not length-

(Testimony of William Fredericks.)

wise—standing right over the vessel and taking a picture down?

A. I took three or four of the pictures, one lengthwise and one broadside, and different ways.

Mr. FRANK.—At any rate you were standing on the dock with your camera pointing down?

A. Not necessarily.

Q. You were not taking it on a level?

A. One of the pictures I did.

The COURT.—How did you take them? He wants to know from what point of view you took them.

A. There are two views, one lengthwise.

Mr. FRANK.—Where did you stand when you took that?

A. I stood right on the dock.

Q. Then your camera must have been pointing down?

A. No, it was pointing straight out, like that. [63]

Q. Was it on a level with the dock?

A. Almost; she was tied right beside it.

Q. Does this represent the end of the pile? It does not so appear on the picture.

A. The ship was about four or five feet below the dock.

Mr. CAMPBELL.—You can see the top of the pile there in front.

Thereupon the said photographs were received in evidence and marked Defendants' Exhibits "A" and "B."

Thereupon both parties rested.

Thereafter Mr. Campbell moved the court to instruct the jury to return a verdict in favor of the defendants and each of them upon the ground that there was no substantial evidence and no evidence to show that the steamer "Monarch" sustained loss or damage by fire or through collision with another ship or vessel or with wharves, piers, stages or similar structures.

The Court thereupon refused to give such instruction to the jury to which order the defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 12.

Thereupon the court instructed the jury that the evidence on behalf of the defendants tended to sustain no competent defense to the action and it would be their duty to return a verdict in favor of the plaintiffs against each one of the insurance companies sued, for the amount named in the policies, together with [64] interest from the date of filing suit September 8, 1915, to the date of the verdict at seven per cent per annum. Said date, September 8, 1915, was agreed by counsel for the plaintiff as the date from which said interest should be reckoned.

Thereupon the defendants excepted to the said instructions and defendants now assign said exception to said ruling as Defendants' Exception No. 13.

The court thereupon instructed the jury that in returning their verdict they might give the total amount to be recovered against the defendants without giving the principal and interest separately.

Thereupon the defendants excepted to said ruling and defendants now assign said exception to said ruling as Defendants' Exception No. 14.

Thereupon the defendants in the presence of the jury requested the court to give defendants' Instruction No. 1, reading as follows:

> "You are instructed that plaintiff has resting upon it the burden of proving by a fair preponderance of the evidence that the loss of or damage to the steamer 'Monarch,' sued for in this action, was proximately caused by one or more of the perils insured against by all of the policies of insurance issued by the defendants and each of them, which are sued upon herein."

The court thereupon refused to give the said instruction, to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 15.

The defendants thereupon requested the court to give defendants' Instruction No. 2 to the jury, reading as follows:

> "You are instructed that plaintiff cannot recover in this action against the defendant Aetna Insurance Company unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' was wrecked and totally lost through collision with another ship or vessel or with wharves, piers, stages or similar structures or that it sustained loss or damage caused by [65] fire.

The court thereupon refused to give the said instruction, to which ruling defendants excepted and now assign said exception to said ruling as Defendants' Exception No. 16.

The defendants thereupon requested the court to give to the jury defendants' Instruction No. 3, reading as follows:

> "You are instructed that plaintiff cannot recover in this action against the defendant, Aetna Insurance Company, unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' sustained loss or damage through collision with another ship or vessel or with wharves, piers, stages or similar structures and that such damage amounted to $750, or that it sustained loss or damage caused by fire."

The court thereupon refused to give the said instruction, to which ruling the defendants excepted and now assign said exception to said ruling as Defendants' Exception No. 17.

The defendants thereupon requested that the court give to the jury the defendants' Instruction No. 4, reading as follows:

> "You are instructed that plaintiff cannot recover in this action against the defendant, the Union Marine Insurance Company unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' was wrecked or totally lost through collision with another ship or vessel or with wharves, piers,

stages or similar structures or that it sustained loss or damage caused by fire."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 18.

The defendants then requested the court to give to the jury defendants' Instruction No. 5, reading as follows:

"You are instructed that plaintiff cannot recover in this action against the defendant, The Union Marine Insurance Company unless it shall have shown by a fair preponderance of [66] the evidence that the steamer 'Monarch' sustained loss or damage through collision with another ship or vessel or with wharves, piers, stages or similar structures and that such damage amounted to $750 or that it sustained loss or damage caused by fire."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 19.

The defendants thereupon requested the court to give to the jury defendants' Instruction No. 6, reading as follows:

"You are instructed that plaintiff cannot recover in this action against the defendant the Hartford Fire Insurance Company unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' was

wrecked and totally lost through collision with another ship or vessel or with wharves, piers, stages or similar structures or that it sustained loss or damage caused by fire."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 20.

Thereupon the defendants requested the court to give to the jury defendants' Instruction No. 7, reading as follows:

"You are instructed that plaintiff cannot recover in this action against the defendant, the Hartford Fire Insurance Company, unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' sustained loss or damage through collision with another ship or vessel or with wharves, piers, stages or similar structures and that such damage amounted to $750 or that it sustained loss or damage caused by fire."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 21. [67]

Thereupon the defendants requested the court to give to the jury defendants' Instruction No. 8, reading as follows:

"You are instructed that there was under the policies here in suit an implied warranty that the 'Monarch' was seaworthy and reasonably

fit, at the commencement of her voyage, to encounter the ordinary perils of the voyage, and if you find, by a fair preponderance of the evidence, that the said steamer was not, at the commencement of her voyage, reasonably fit to encounter the ordinary perils of said voyage, your verdict must be for the defendants."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 22.

Thereupon the defendants requested the court to give to the jury defendants' Instruction No. 9, reading as follows:

"You are instructed that the policies of insurance issued by defendant, Aetna Insurance Company, sued upon herein, insured plaintiff's interest in the steamer 'Monarch' in the sum of $10,000, only as follows:

"Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire policy as issued by the Aetna Insurance Company of Hartford, Conn.

"Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

"COLLISION CLAUSE:

"And it is further agreed that if the ship hereby insured shall come into collision with

any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision [68] the value of the ship hereby insured, we, the assurers, will pay the assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the ship hereby insured, and in cases in which the liability of the ship has been contested with our consent in writing, we the assurers, will also pay a like proportion of four-fourths of the cost which the assured shall hereby incur or be compelled to pay; but when both vessels are to blame, then, unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel has been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision. PROVIDED, always that this clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for the removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or en-

gagements of the insured vessel, or for loss of life or personal injury.

"AND it is further agreed that the principles involved in this clause shall apply to the case where the vessels are the property in part or in whole of the same owners.

"Loss or damage sustained by the vessel insured through collision with another ship or vessel, or with wharves, piers, stages, or similar structures if amounting to $750. The cost of repairs of such damage being paid without deduction of one-third new for old.

"This policy also covers while vessel is at wharves or docks, and permission granted to carry passengers, freight, material and [69] supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

"Permitted to tow and to be towed and to assist vessels and/or crafts in all situations.

"Warranted by the assured confined to San Francisco Bay and/or tributaries including Sacramento and/or San Joaquin Rivers, during the currency of this policy."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 23.

Thereupon the defendants requested the court to

give to the jury defendants' Instruction No. 10, reading as follows:

> "You are instructed that the policies of insurance issued by defendant, The Union Marine Insurance Company, sued upon herein, insured plaintiff's interest in the steamer 'Monarch' in the sum of $3750, only as follows": (Remaining portion of requested instruction is the same as that embodied in Instruction No. 9.)

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 24.

Thereupon the defendants requested the court to give to the jury defendants' Instruction No. 11, reading as follows:

> "You are instructed that the policies of insurance issued by defendant, Hartford Fire Insurance Company, sued upon herein, insured plaintiff's interest in the steamer 'Monarch' in the sum of $6,000, only as follows": (The remaining portion of the requested instruction is the same as that embodied in Instructions Nos. 9 and 10.)

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 25. [70]

Thereupon the defendants requested the court to give to the jury defendants' Instruction No. 12, reading as follows:

"You are instructed to return a verdict in favor of the defendant, Aetna Insurance Company, for the reason that there is no substantial evidence to sustain a verdict for the plaintiff."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 26.

Thereupon the defendants requested the court to give to the jury defendants' Instruction No. 13 reading as follows:

"You are instructed to return a verdict in favor of the defendant, the Union Marine Insurance Company, for the reason that there is no substantial evidence to sustain a verdict for the plaintiff."

The court thereupon refused to give the said instruction to which ruling defendants excepted and defendants now assign said exception to said ruling as Defendants' Exception No. 27.

Thereupon the defendants requested the court to give to the jury defendants' Instruction No. 14 reading as follows:

"You are instructed to return a verdict in favor of the defendant, the Hartford Fire Insurance Company, for the reason that there is no substantial evidence to sustain a verdict for the plaintiff."

The court thereupon refused to give the said instruction to which ruling defendants excepted and

defendants now assign said exception to said ruling as Defendants' Exception No. 28.

Thereupon the jury retired and thereafter returned into court with a verdict in favor of the plaintiff and against defendants.

Thereupon defendants took an exception to the verdict of the jury and said defendants now assign said exception as Defendants' Exception No. 29. [71]

Plaintiff's Exhibit No. 1.

Steamer "MONARCH"

This Policy is to Cover Only as Follows:

Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire policy as issued by the Aetna Insurance Company of Hartford, Conn.

Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

COLLISION CLAUSE

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured and in cases in which

the liability of the Ship has been contested with our consent in writing, we the Assurers, will also pay a like proportion of four-fourths of the costs which the Assured shall thereby incur or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of each Vessel had been compelled to pay to the owners of the other of such Vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

PROVIDED ALWAYS THAT THIS CLAUSE SHALL IN NO CASE EXTEND TO ANY SUM WHICH THE ASSURED MAY BECOME LIABLE TO PAY, OR SHALL PAY FOR REMOVAL OF OBSTRUCTIONS UNDER STATUTORY POWERS, FOR INJURY TO HARBORS, WHARVES, PIERS, STAGES, AND SIMILAR STRUCTURES, CONSEQUENT ON SUCH COLLISION, OR IN RESPECT OF THE CARGO OR ENGAGEMENTS OF THE INSURED VESSEL, OR FOR LOSS OF LIFE OR PERSONAL INJURY.

And it is further agreed that the principles involved in this clause shall apply to the case where the vessels are the property in part or in whole of the same owners.

Loss or damage sustained by the vessel insured through collision with another ship or vessel, or with wharves, piers, stages, or similar structures if amounting to $750.00. The cost of repairs of such damage being paid without deduction of one-third new for old.

This policy also covers while vessel is at wharves or docks and permission granted to carry passengers, freight, material and supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

Permitted to tow and to be towed and to assist vessels and/or craft in all situations.

Warranted by the Assured confined to waters of San Francisco Bay and tributaries, including Sacramento and/or San Joaquin Rivers—(Sg.) C. W. H.—during the currency of this policy.

The foregoing clauses are to be regarded as substituted for the terms of the policy to which they are attached, the latter being hereby waived.

Attached to Policy No. 709.

It is agreed that the clauses on slip attached hereto form part of this policy.

No. 709.

HULL TIME.

$3750.—

THE UNION MARINE INSURANCE COMPANY, LIMITED.

HEAD OFFICE.
11 Dale Street, Liverpool.

H. R. Robertson,
Chairman,
J. Sandeman Allen,
General Manager and Secretary.

PACIFIC COAST BRANCH.

342 Sansome Street, San Francisco.
W. IRVING, Manager.
R. Gallegos, Asst. Manager.
C. Wm. Henderson, Marine Underwriter.

BRANCH OFFICES AT

London: 1 Threadneedle Street.
Manchester: 47 Spring Gardens.
Glasgow: 22 Royal Exchange Square.
New York: 37 Wall Street.

WHEREAS it hath been proposed to THE UNION MARINE INSURANCE CO., LTD., of Liverpool, by Sacramento–Stockton Steamship Company as well in his or their own name as for and in the name or names of all and every other person or persons to whom the subject matter of this Policy does may or shall appertain in part or in all to make with the said Company the Insurance hereinafter mentioned and described.

NOW THIS POLICY WITNESSETH that in consideration of the said person or persons effecting this Policy promising to pay to the said Company the sum of One hundred twelve and 50/100 Dollars as a premium at and after the rate of three per cent, the said Company takes

upon itself the burthen of such Insurance to the amount

and 00/100 Dollars

of three thousand seven hundred fifty A ($3750.—)

Dollars

to be insured from July 22d, 1914, noon Pacific Standard Time, to July 22d, 1915, noon Pacific Standard Time.

Sum Insur

As employment may offer, in port and at sea, in docks and graving docks, and on the ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and in the good Steamer called the "MONARCH" or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship, &c., as above, and shall so continue and endure during the period as aforesaid. Should the above vessel be at sea on the expiration of this Policy, it is agreed to hold her covered until arrival at port of destination on her being moored therein twenty-four hours in good safety (provided that before the expiration the Assured shall have given notice of intention to so continue) at a *pro rata* monthly premium, and it shall be lawful for the said ship, &c., to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

$3750.—

per cent.

Hull, Tackle, Apparel and Furniture,....$
Machinery and Boilers,.....$ $40,000.—
Forty thousand .....Dollars.

TOUCHING the Adventures and Perils which we, the said insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof.

In case of any Loss or Misfortune, it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and recovery of the said ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof the said Insurance Company will contribute according to the Rate and Quantity of the sum herein insured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

ium

Free from average under Three per cent. unless general or the ship be stranded, sunk or burnt, on fire or in collision with another ship or vessel.

50.

Claims, if any, including claim for constructive total loss, to be adjusted according to English law and practice.

This insurance is understood and agreed to be subject to English law and usage as to liability for and settlement of any and all claims.

With leave to sail with or without Pilots, to tow and assist vessels and craft in all situations, and to be towed and to go on trial trips.

With liberty to discharge, exchange, and take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free from any claim in respect of jettison of cattle or goods carried on deck.

Average payable on each valuation separately, or on the whole. Each voyage to be subject to separate average.

In event of damage, cost of repairs to be paid without deduction of one-third, whether the average be particular or general.

General average payable as per foreign custom if required, or per York-Antwerp Rules, if in accordance with the contract of affreightment.

Warranted free of capture, seizure and detention and the consequences thereof or any attempt thereat, piracy excepted, and also from all consequences of riots and civil commotions, hostilities or warlike operations whether before or after declaration of war.

Warranted free of loss or damage caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions.

IN WITNESS WHEREOF this policy has been signed in San Francisco, State of California, this 25th day July

1914 for and on behalf of the said Company, by virtue of Power of Attorney granted by said Company in that behalf.

(Sg.) C. WM. HENDERSON,
Underwriter. [72]

[Printed in left-hand margin]: It is agreed that the clauses on slip attached hereto form part of this policy. The Union Marine Insurance Co., Ltd.

[Printed in right-hand margin]: This insurance subject to limitations of trade as per slip attached.

[Endorsement]: (English Form) Hull Time. The Union Marine Insurance Co., Ltd., of Liverpool. No. 709. Expires July 22d, 1915. Vessel, S. S. "Monarch." Assured, Sacramento-Stockton S. S. Co. $3750.— at 3%, $112.50. W. Irving, Manager Pacific Coast Branch, 343 Sansome St., San Francisco, Cal. (Stamped) H. Stephenson Smith, General Insurance Agent.

[Endorsed]: No. 15930. U. S. Court, Nor. Dist. of Cal. Pltff's Exhibit 1. 6/15/16. M. Clerk.

Plaintiff's Exhibit No. 2.

Steamer "MONARCH"

This Policy is to Cover Only as Follows:

Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire policy as issued by the Aetna Insurance Company of Hartford, Conn.

Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

COLLISION CLAUSE

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured and in cases in which the liability of the Ship has been contested with our consent in writing, we the Assurers, will also pay a like proportion of four-fourths of the costs which the Assured shall thereby incur or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of each Vessel had been compelled to pay to the owners of

the other of such Vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

PROVIDED ALWAYS THAT THIS CLAUSE SHALL IN NO CASE EXTEND TO ANY SUM WHICH THE ASSURED MAY BECOME LIABLE TO PAY, OR SHALL PAY FOR REMOVAL OF OBSTRUCTIONS UNDER STATUTORY POWERS, FOR INJURY TO HARBORS, WHARVES, PIERS, STAGES, AND SIMILAR STRUCTURES, CONSEQUENT ON SUCH COLLISION, OR IN RESPECT OF THE CARGO OR ENGAGEMENTS OF THE INSURED VESSEL, OR FOR LOSS OF LIFE OR PERSONAL INJURY.

And it is further agreed that the principles involved in this clause shall apply to the case where the vessels are the property in part or in whole of the same owners.

Loss or damage sustained by the vessel insured through collision with another ship or vessel, or with wharves, piers, stages, or similar structures if amounting to $750.—. The cost of repairs of such damage being paid without deduction of one-third new for old.

This policy also covers while vessel is at wharves or docks and permission granted to carry passengers, freight, material and supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

Permitted to tow and to be towed and to assist vessels and/or craft in all situations.

Warranted by the Assured confined to San Francisco Bay and/or tributaries including Sacramento and/or San Joaquin Rivers during the currency of this policy.

The foregoing clauses are to be regarded as substituted for the terms of the policy to which they are attached, the latter being hereby waived.

Attached to Policy No. 3563.

AETNA INSURANCE CO.

J. A. W.

[Printed in left-hand margin]: Subject to limitations of trade as specified in slip attached to this policy. J. A. W.

It is agreed that clauses on slip attached hereto form part of this policy. J. A. W.

Duplicate J. A. W.

MARINE DEPARTMENT

AETNA INSURANCE COMPANY.

Hartford, Connecticut.

Incorporated, 1819. Cash Capital $5,000,000

Pacific Branch, San Francisco, California.

SACRAMENTO-STOCKTON STEAMSHIP CO.

On account of concerned.

In case of loss, to be paid in funds current in the United States to Assured, or order,

Does make Insurance and cause TEN THOUSAND DOLLARS,

To be insured from July 22d, 1914 at Noon, Pacific Standard Time to July 22d, 1915 Noon, Pacific Standard Time.

As employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and in the good Steamer called the "MONARCH" or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship, &c., as above, and shall so continue and endure during the period as aforesaid. Should the above vessel be at sea on the expiration of this Policy, it is agreed to hold her covered until arrival at port of destination on her being moored therein twenty-four hours in good safety (provided that before the expiration the Assured shall have given notice of intention to so continue) at a

pro rata monthly premium, and it shall be lawful for the said ship, &c., to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, Tackle, Apparel and Furniture,....$....

Machinery and Boilers,.....$....$40,000.— Rate per cent

FORTY THOUSAND .....DOLLARS. 3.

TOUCHING the Adventures and Perils which we, the said insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof; and in case of any Loss or Misfortune it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof the said Insurance Company will contribute according to the Rate and Quantity of the sum herein insured. [Written across face of canceled matter: Void. J. A. W.] And it is specially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandon-

ment; having been paid the consideration for this Insurance, by the Insured or his or their Assigns, at and after the rate of 3 per cent., to return ..... per cent. for every 30 consecutive days the vessel may be laid up in port, or in dock; during such period the vessel being at the risk of the Insurers—to return *pro rata* premium for every 30 days of unexpired time, if this Policy be canceled and arrival.

Free from average under Three per cent unless general or the ship be stranded, sunk or burnt, on fire or in collision with another ship or vessel.

[Written across face of canceled matter: Void. J. A. W.]

Claims, if any, including claim for constructive total loss, to be adjusted according to English law and practice.

With leave to sail with or without Pilots, to tow and assist vessels and craft in all situations, and to be towed and to go on trial trips.

With liberty to discharge, exchange, and take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free from any claim in respect of jettison of cattle or goods carried on deck. Average payable on each valuation separately, or on the whole. Each voyage to be subject to separate average. In event of damage, cost of repairs to be paid without deduction of one-third, whether the average be particular or general. General average payable as per foreign custom if required, or per York-Antwerp Rules, if in accordance with the contract of affreightment.

It is agreed, that if the ship hereby insured shall come into collision with any other ship or vessel, and the insured shall in consequence thereof become liable to pay, and shall pay any sums not exceeding the value of the ship hereby insured, in respect of injury to such other ship or vessel, itself, or to the goods and effects on board thereof, or for loss of freight then being earned upon such goods by such other ship or vessel, the INSURERS will pay the Insured such proportion of three-fourths parts of said sums as the amount hereby insured bears to the value of the ship hereby insured. But this agreement is in no case to be construed as extending to any sums which the Insured may become liable to pay, or shall pay in respect of loss of life or personal injury to individuals, from any cause whatever.

Provided always that this clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for the removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

[Written across face of canceled matter: Void J. A. W.]

It is agreed that any change of interest in the vessel hereby insured shall not affect the validity of this Policy.

If there be an Agent of the INSURERS located at or near any place where repairs are made, or proofs of loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company.

IN WITNESS WHEREOF, the said AETNA INSURANCE COMPANY, has caused this Policy to be signed by its President, and attested by its Marine Secretary, at its office in the City of Hartford, and State of Connecticut, and this Policy is made and accepted upon the above expressed conditions, but shall not be valid unless countersigned by the duly authorized Agents of the Company.

Countersigned at San Francisco Cal., this 22d day of July, 1914.

WM. K. CLARK,
President.
W. F. WHITTELSEY,
Marine Secretary.
E. S. LIVINGSTON,
Asst. Gen'l Agent. [73]

[Printed in right-hand margin]: Warranted free from capture, seizure and detention, and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of riots, civil commotions, hostilities or warlike operations, whether before or after declaration of war.

[Endorsement]: Hull Time. English Form. No. 3563. Expires, July 22d, 1915. Vessel, S. S. "Monarch." Assured, Sacramento–Stockton Steamship Company. Aetna Insurance Company, Hartford, Connecticut, Marine Department, 301 California Street, San Francisco, Cal. $10,000.— at 3%, $300.—. (Stamped) H. Stephenson Smith, General Insurance Agent. (Edition May, 1911)–3–'12–1 M.

[Endorsed]: No. 15930. U. S. Court, Nor. Dist. of Cal. Pltff's. Exhibit 2. 6/15/16. M. Clerk.

Plaintiff's Exhibit No. 3.

SAMPLE COPY.

Steamer "MONARCH"

This Policy is to Cover Only as Follows:

Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire policy as issued by the Hartford Fire Insurance Company of Hartford, Connecticut.

Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

COLLISION CLAUSE.

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured and in cases in which the liability of the Ship has been contested with our consent in writing, we the Assurers, will also pay a like proportion of four-fourths of the costs which the Assured shall thereby incur or be compelled to pay; but when both Vessels are to blame, then, unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners of

each Vessel had been compelled to pay to the owners of the other of such Vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

PROVIDED ALWAYS THAT THIS CLAUSE SHALL IN NO CASE EXTEND TO ANY SUM WHICH THE ASSURED MAY BECOME LIABLE TO PAY, OR SHALL PAY FOR REMOVAL OF OBSTRUCTIONS UNDER STATUTORY POWERS, FOR INJURY TO HARBORS, WHARVES, PIERS, STAGES, AND SIMILAR STRUCTURES, CONSEQUENT ON SUCH COLLISION, OR IN RESPECT OF THE CARGO OR ENGAGEMENTS OF THE INSURED VESSEL, OR FOR LOSS OF LIFE OR PERSONAL INJURY.

And it is further agreed that the principles involved in this clause shall apply to the case where the vessels are the property in part or in whole of the same owners.

Loss or damage sustained by the vessel insured through collision with another ship or vessel, or with wharves, piers, stages, or similar structures if amounting to $750.00. The cost of repairs of such damage being paid without deduction of one-third new for old.

This policy also covers while vessel is at wharves or docks and permission granted to carry passengers, freight, material and supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

Permitted to tow and to be towed and to assist vessels and/or craft in all situations.

Warranted by the Assured confined to waters of San Francisco Bay and tributaries, including Sacramento and/or San Joaquin Rivers during the currency of this policy.

The foregoing clauses are to be regarded as substituted for the terms of the policy to which they are attached, the latter being hereby waived.

Attached to Policy No. 4035.

(Sg.) DIXWELL HEWITT,
General Manager.

MARINE DEPARTMENT

HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut.

SACRAMENTO-STOCKTON STEAMSHIP CO.

On account of whom concerned.

No.

In case of loss, to be paid in funds current in the United states to them or order.

Does make Insurance and cause Six thousand and 00/100 Dollars,

To be insured at and from the 22d day of July, 1914, noon, Pacific Standard Time, to the 22d day of July, 1915, noon, Pacific Standard Time.

As employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and

Insured,

0.00

in the good Steamer called the "MONARCH" or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship, &c., as above, and shall so continue and endure during the period as aforesaid. Should the above vessel be at sea on the expiration of this Policy, it is agreed to hold her covered until arrival at port of destination on her being moored therein twenty-four hours in good safety (provided that before the expiration the Assured shall have given notice of intention to so continue) at a *pro rata* monthly premium, and it shall be lawful for the said ship, &c., to proceed and sail to and touch and

stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, Tackle, Apparel and Furniture,....$....

Machinery and Boilers,.....$....$40,000.00 Rate per cent., 3.

Forty thousand and 00/100.....DOLLARS.

TOUCHING the Adventures and Perils which we, the said insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof; and in case of any Loss or Misfortune it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof the said Insurance Company will contribute according to the Rate and Quantity of the sum herein insured. And it is specially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this Insurance, by the Insured or his or their Assigns, at and

after the rate of three per cent., to return .... per cent. for every 30 consecutive days the vessel may be laid up in port, or in dock; during such period the vessel being at the risk of the Insurers—to return *pro rata* premium for every 30 days of unexpired time, if this Policy be canceled and arrival.

Free from average under Three per cent. unless general or the ship be stranded, sunk or burnt, on fire or in collision with another ship or vessel.

Claims, if any, including claim for constructive total loss, to be adjusted according to English law and practice.

With leave to sail with or without Pilots, to tow and assist vessels and craft in all situations, and to be towed and to go on trial trips.

With liberty to discharge, exchange, and take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free from any claim in respect of jettison of cattle or goods carried on deck. Average payable on each valuation separately, or on the whole. Each voyage to be subject to separate average. In event of damage, cost of repairs to be paid without deduction of one-third, whether the average be particular or general. General average payable as per foreign custom if required, or per York-Antwerp Rules, if in accordance with the contract of affreightment.

It is agreed, that if the ship hereby insured shall come into collision with any other ship or vessel, and the insured shall in consequence thereof become liable to pay, and shall pay any sums not exceeding the value of the ship hereby insured, in respect of injury to such other

ship or vessel, itself, or to the goods and effects on board thereof, or for loss of freight then being earned upon such goods by such other ship or vessel, the INSURERS will pay the Insured such proportion of three-fourths parts of said sums as the amount hereby insured bears to the value of the ship hereby insured. But this agreement is in no case to be construed as extending to any sums which the Insured may become liable to pay, or shall pay in respect of loss of life or personal injury to individuals, from any cause whatever.

Provided always that this clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for the removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages and similar structures consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

It is agreed that any change of interest in the vessel hereby insured shall not affect the validity of this Policy.

If there be an Agent of the INSURERS located at or near any place where repairs are made, or proofs of loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company.

IN WITNESS WHEREOF, this company has executed and attested these presents, this 22d day of July, 1914. This policy shall not be valid until countersigned by the

It is a condi
of this policy t
any broker, per
firm, or corp
tion who shall
cure this insura
to be taken by
company shall
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to this insuran

duly authorized general agent of the company at Hartford, Conn. San Francisco, Cal.

FRED'K SAMSON,
Secretary.

R. M. BISSELL,
President.

Countersigned by

DIXWELL HEWITT,
General Agent. [74]

[Printed in right-hand margin]: Warranted free from capture, seizure and detention, and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of riots, civil commotions, hostilities or warlike operations, whether before or after declaration of war.

[Endorsement]: Hull Time. English Form. Issued to Sacramento–Stockton Steamship Co. Amount Insured, $6,000.00. Rate, 3%. Premium, $180.00. Expires, July 22, 1915. No. 40035. Vessel Valued "Monarch." Marine and Transportation Department. Hartford Fire Insurance Company, Hartford, Conn. San Francisco Agency, 441 California Street. H. Stephenson Smith, General Insurance Agent. 5c 2–14–1914. Edition Jan. 1914. No. 287.

[Endorsed]: No. 15930. U. S. Court, Nor. Dist. of Cal. Pltff's. Exhibit 3. 6/15/16. M., Clerk.

That thereafter defendants filed a petition for a new trial which was denied on the 1st day of March, 1920; that the court, during the pendency of said petition for a new trial, with the consent of plaintiff, extended defendants' time within which to propose a bill of exceptions herein; that during the pendency of said petition for a new trial the power of the court to settle this bill of exceptions has been by stipulation and order of court continued from term to term; that defendants' proposed bill of exceptions was within .the time allowed by law, to wit: on the thirtieth day of March, 1920, duly served upon plaintiff; that on April 9, 1920, and at successive intervals thereafter plaintiff has with the consent of defendants obtained extensions of time to propose amendments to said proposed bill to and including October 26th, 1920; that with the consent of the parties duly given, the power of the court to settle this engrossed bill has, during all of said time, been continued from term to term to and including the present term in which it is now settled.

The foregoing constitutes all of the proceedings and all of the evidence offered and received on the trial of said action, and now, within the time required by law and the rules of this court, said defendants propose the foregoing as and for their bill of exceptions to the rulings of the court made during the trial of the above entitled action and to the decision of the said court and the verdict of said jury and prays

that it may be settled and allowed as correct.

McCUTCHEN, OLNEY & WILLARD,
McCUTCHEN, WILLARD, MANNON
& GREENE,
Attorneys for Defendants. [75]

Stipulation as to the Correctness of the Bill of Exceptions.

IT IS HEREBY STIPULATED AND AGREED that the above and foregoing constitutes a true and correct bill of exceptions in the above-entitled action, and that the same contains all of the proceedings had and all of the evidence offered and received on the trial of said action and all of the rulings of the court made during the trial of said action, and that the same may be now settled and allowed as and for the bill of exceptions to such rulings, and to the decision of the court herein.

Dated, San Francisco, California, this 26th day of October, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff.

McCUTCHEN, OLNEY & WILLARD,
McCUTCHEN, WILLARD, MANNON
& GREENE,
Attorneys for Defendants.

It appearing to the satisfaction of the undersigned judge of the above-entitled court that the judge before whom the above-entitled cause was tried, to wit, the Honorable Wm. C. Van Fleet, is, by reason of

disability due to sickness, unable to consider, allow and sign the foregoing bill of exceptions;

NOW, THEREFORE, the undersigned, being a judge of the court in which the cause was tried and holding such court, hereby certifies that the said bill of exceptions contains all of the proceedings had and all of the evidence offered and received on the trial of the above-entitled action and all of the rulings of the court made during said trial and all of the exceptions of the respective parties thereto, and that said bill is in proper form and conforms to the truth, and the same is hereby allowed and [76] signed as the true bill of exceptions herein.

R. S. BEAN,
District Judge.

October 26, 1920.

Receipt of a copy of the within bill of exceptions is hereby admitted this 30th day of March, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 26, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [77]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO - STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURACE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Petition for Allowance of Writ of Error.

Aetna Insurance Company, a corporation, Union Marine Insurance Company, a corporation, and Hartford Fire Insurance Company, a corporation, defendants in the above-entitled cause, feeling themselves aggrieved by the decision of the court in the judgment entered therein on the 16th day of June, 1916, come now by Messrs. McCutchen, Willard, Mannon & Greene, their attorneys, and petition said court for an order allowing said defendants to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals, for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security

which the said defendants shall give and furnish upon said writ of error and that upon the giving of such security [78] all further proceedings in this court be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals, for the Ninth Circuit.

EDWARD J. McCUTCHEN,
McCUTCHEN, WILLARD, MANNON & GREENE,
Attorneys for Defendants and Petitioners.

[Endorsed]: Filed May 8, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [79]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO – STOCKTON STEAMSHIP COMPANY, a Corporation,
Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation, THE UNION MARINE INSURANCE COMPANY, LIMITED, a Corporation, THE HARTFORD FIRE INSURANCE COMPANY, a Corporation,
Defendants and Petitioners.

Assignment of Errors.

Now come The Aetna Insurance Company, a cor-

poration, The Union Marine Insurance Company, Limited, a corporation, and The Hartford Fire Insurance Company, a corporation, petitioners and defendants herein, and make and file the following assignment or errors upon which they will rely in the prosecution of their writ of error in the above-entitled cause:

I.

The above-entitled court erred in holding and determining that plaintiff was entitled to judgment against defendant The Aetna Insurance Company, a corporation, in the sum of ten thousand five hundred and forty-six and 38/100 (10,546.38) dollars, together with interest thereon, and against The Union [80] Marine Insurance Company, Limited, a corporation, in the sum of three thousand nine hundred fifty-four and 90/100 (3,954.90) dollars, together with interest thereon, and The Hartford Fire Insurance Company, a corporation, in the sum of six thousand three hundred and twenty-seven and 83/100 (6,327.83) dollars, together with interest thereon.

II.

The court erred in holding and deciding that the plaintiff was entitled to judgment against defendants inasmuch as the evidence did not show, and there was no evidence to show, by what peril or perils said steamer "Monarch" was wrecked and lost or what was the cause of her wrecking and loss.

III.

The court erred in holding and deciding that the plaintiff was entitled to said judgment, inasmuch

as the evidence did not show and there was no evidence to show that the steamer "Monarch" was wrecked and totally lost or wrecked or totally lost, or wrecked or lost at all, by a peril or any of the perils named in the policies issued by these defendants, and each of them, and sued upon herein.

IV.

The court erred in holding and deciding that the plaintiff was entitled to said judgment, inasmuch as the evidence did not show and there was no evidence to show that said steamer "Monarch" was lost by fire or through collision with another ship or vessel, or with wharves, piers, stages or similar structures. [81]

V.

The court erred in holding and deciding that the plaintiff was entitled to said judgment, inasmuch as the evidence did not show and there was no evidence to show that said steamer "Monarch" was lost or sustained damage through collision with another ship or vessel or with wharves, piers, stages or similar structures to the amount of seven hundred and fifty (750) dollars or more.

VI.

That the court erred in holding and deciding that the plaintiff was entitled to said judgment, inasmuch as the evidence did not show and there was no evidence to show that any notice or notices of abandonment of said steamer "Monarch" was or were served upon these defendants or any of them with reasonable diligence.

VII.

The court erred in holding and deciding that plaintiff was entitled to said judgment, inasmuch as the purported notices of abandonment pleaded in the complaint were insufficient and not explicit, and did not specify the particular cause of the alleged abandonment, as required by the law applicable in the premises.

VIII.

The court erred in holding and determining that under the refusal of these defendants and each of them to accept the proffered abandonment of said steamer "Monarch" the only defense available to defendants and each of them was the unseaworthiness of the said steamer "Monarch," all other defenses being abandoned and waived, and that under the [82] policies in suit unseaworthiness was not in turn a defense.

IX.

The court erred in holding and determining that these defendants and each of them were not entitled to show and offer evidence of the cause of the loss of said steamer "Monarch" and that such cause of loss was not covered by the policies in suit.

X.

The court erred in declining and refusing to permit these defendants and each of them to show that unseaworthiness was the cause of the loss of said steamer "Monarch."

XI.

The court erred in holding and determining that it was not requisite for plaintiff, in order that it might

recover in this action, to prove the allegation of its complaint that the said steamer was wrecked and totally lost by perils named in and insured against by the policies in suit.

XII.

The court erred in holding and determining that it was not requisite for plaintiff, in order to recover in this action, to show what was the cause of the loss of the said steamer "Monarch."

XIII.

The court erred in holding and determining that it was not requisite for plaintiff, in order to recover in this action, to show that the steamer "Monarch" was lost by a peril named in the riders attached to the policies in suit. [83]

XIV.

The Court erred in holding and determining that it was not requisite for plaintiff, in order to recover in this action, to show that the said steamer "Monarch" was lost by a peril named, either in the riders attached to the policies in suit, or anywhere at all in said policies.

XV.

The Court erred in holding and determining that the perils or causes of loss named in the riders attached to the policies in suit were not the only perils or causes of loss covered by said policies and each of them.

XVI.

The Court erred in holding and determining that the only perils or causes of loss named in the body

of the policy of The Aetna Insurance Company, sued on herein, which were canceled by the rider attached to said policy, were the perils or causes of loss that were deleted in the said body of the policy, to wit, the fire and collision causes so deleted.

XVII.

The Court erred in holding and determining that the policy of The Aetna Insurance Company sued on herein covered perils and causes of loss other than those named in the rider attached to said policy, to wit, in addition to the causes and perils of loss named in said rider, all the perils and causes of loss named in the body of the policy and not deleted therefrom. [84]

XVIII.

The Court erred in holding and determining that the riders attached to the policies in suit replaced only the corresponding clauses of the main body of the policies, to wit, the fire and collision clauses thereof.

XIX.

The Court erred in holding and determining that by reason of the clause stamped across the margins of the policies in suit, to wit, the clause,

> "It is agreed that clause on slip attached hereto form a part of this policy,"

that the riders attached to said policies did not specify the only perils or causes of loss insured against by the policies in suit and each of them.

XX.

The Court erred in holding and determining that by reason of the foregoing marginal clauses in each

of said policies, and/or by reason of the express deleting of certain clauses in the main body of the policy of the Aetna Insurance Company, and/or on account of any reason or reasons whatsoever, the perils or causes of loss named in the riders attached to the policies in suit were not the only causes of perils insured against by said policies.

XXI.

The Court erred in refusing and declining to permit the witness, S. A. Livingston, to answer the question whether prior to the time that the policies in suit were written he had any conversation with the president and the manager of plaintiff corporation concerning the risk or risks [85] against which the said policies and each of them were intended to cover.

XXII.

The Court erred in refusing and declining to permit counsel for defendants to show by said witness what was said by the witness and by the president and the manager of plaintiff corporation in said conversation.

XXIII.

The Court erred in refusing and declining to permit counsel for defendants to prove by the said witness S. A. Livingston that the manager of the plaintiff corporation said to the said S. A. Livingston that the only kind of insurance which plaintiff wanted was that covering against fire and collision and that he, the said Livingston, told the said manager that the rate for fire and collision insurance only would be three per cent whereas if plaintiff

insured against all risks the premium would be five per cent and that the said manager said that the only real risks of loss on San Francisco Bay were those occasioned by fire and collision and that therefore plaintiff would not pay more than three per cent covering against fire and collision only.

XXIV.

The Court erred in refusing and declining to permit counsel for defendants to show by witness S. A. Livingston that it was the general understanding among those engaged in the insurance business and in the shipping business in San Francisco and thereabouts that the riders attached to the policies in suit and each of them superseded the terms of the said policies and that said riders alone defined the risks [86] against which the said policies insure.

XXV.

The Court erred in refusing and declining to receive evidence from Mr. Ernest Livingston, assistant general agent and underwriter for the Aetna Insurance Company, one of the defendants, and from Mr. A. W. Follansbee, marine underwriter for the Firemen's Fund Insurance Company, both of whom were present in court and ready to testify and both of whom were offered by defendants as witnesses, that the general understanding among those engaged in the insurance and shipping business in San Francisco and thereabouts is that a rider such as that appearing upon the policies in suit supersedes the terms of said policies

and alone defines the risks against which the said policies insure.

XXVI.

The Court erred in holding and determining that any and all the terms or any of the terms of the policies of insurance issued by these defendants and sued upon herein provided that the liability of said defendants under their respective policies, including the liability for destruction, total loss or otherwise, was to be determined according to English law and practice.

XXVII.

The Court erred in denying defendants' motion for a nonsuit made at the close of plaintiff's case in chief and based upon the ground that plaintiff had not shown a loss which was covered by the policy, which said motion is set forth [87] in Defendants' Exception No. 1.

XXVIII.

The Court erred in denying defendants' motion, made at the conclusion of all of the evidence, for an instruction to the jury to return a verdict in favor of the defendants upon the ground that there was no substantial evidence and no evidence to show that the steamer "Monarch" sustained loss or damage by fire or through collision with another ship or vessel or with wharves, piers, stages or similar structures.

XXIX.

The Court erred in holding that there was no issue of fact to submit to the jury and in refusing to submit any issue of fact to the jury.

XXX.

The Court erred in holding that there was no issue of fact as to the cause of the loss of the steamer "Monarch" to submit to the jury and in refusing to submit to the jury the question whether the cause of the loss of the steamer "Monarch" was her own unseaworthiness.

XXXI.

The Court erred in not submitting to the jury the question as to whether the "Monarch" was lost or wrecked by any one of the perils insured against by the policies of insurance issued by said defendants.

XXXII.

The Court erred in instructing the jury that the evidence on behalf of the defendants tended to sustain no competent defense to the action and in instructing the jury that it was its duty to return a verdict in this case in favor of the plaintiff and against these defendants for the amount named in the policy issued by each of the said defendants sued herein, together with interest thereon from the 28th day of September, 1915, to the date of the verdict at the rate of seven per cent and in instructing the jury to return a verdict in favor of the plaintiff and against these defendants at all. [88]

XXXIII.

The Court erred in sustaining plaintiff's objection to the following question propounded to the witness, C. Moltzen, as shown by Plaintiff's Exception No. 2, as follows:

"Q. Did she fill with water that night while she was going up the river?"

XXXIV.

The Court erred in sustaining plaintiff's objection to a question propounded to the witness, C. Moltzen, as shown by defendants' Exception No. 3, as follows:

"Mr. CAMPBELL.—What, in your judgment was the cause of the water entering this vessel through the seams?"

XXXV.

The Court erred in refusing and declining to permit counsel for defendants to show by witness C. Moltzen the cause of the sinking of the vessel, as shown by Defendants' Exception No. 4, as follows:

"Mr. CAMPBELL.—I offer to prove by this witness that in his judgment the cause of the water entering through the seams of that vessel was her unseaworthiness. I further offer to prove on the whole question that the cause of the water entering the ship's seams was not through collision with any ship or vessel or with any wharf, pier, stage or similar structure."

XXXVI.

The Court erred in overruling defendants' objection to the following question propounded to the witness, C. Moltzen, as shown by defendants' exception No. 5, as follows:

"Do you know whether or not that vessel had been plying back and forth on that line

for some length of time [89] before that time?"

XXXVII.

The Court erred in sustaining plaintiff's objection to the following question propounded to the witness, S. A. Livingston, as shown by plaintiff's exception No. 6, as follows:

"Did you, at or prior to the time that that policy was written, have any conversation with Mr. Gormley, the president, and Mr. Cochrane, the manager, of plaintiff corporation as to the risk against which the policy was to cover?"

XXXVIII.

The Court erred in refusing and declining to permit counsel for defendants to show what were the risks intended to be covered and what was the kind of insurance desired by plaintiff corporation, as shown by defendants' exception No. 8, as follows:

"Mr. CAMPBELL.—I offer to prove by this witness that Mr. Cochrane said that the only kind of insurance which they wanted was that covering fire and collision only, and that he, Mr. Livingston, the witness, told Mr. Cochrane that the rate for fire and collision insurance only would be 3 per cent, whereas if they insured against all risks the premium would be 5 per cent, but Mr. Cochrane said that the only real risks of loss on the bay were those occasioned by fire and collision and therefore they

would not pay more than 3 per cent covering against fire and collision only."

XXXIX.

The Court erred in sustaining plaintiff's objection to the following question propounded to the witness, S. A. Livingston, [90] as shown by defendants' exception No. 9, as follows:

"What is the general understanding among those engaged in marine insurance business and shipping business in San Francisco as to whether or not the rider which is endorsed upon all three of the policies in suit supersedes the terms of the policy and alone defines the risks against which the policy insures?"

XL.

The Court erred in refusing and declining to receive the following evidence of Mr. Ernest Livingston and Mr. A. W. Follansbee, as shown by defendants, exception No. 10, as follows:

"That the general understanding among those engaging in the insurance and shipping business in San Francisco and thereabouts is that the rider, such as appears on the policies in suit, supersedes the terms of these policies and alone defines the risks against which the policies insure."

XLI.

The Court erred in sustaining plaintiff's objection to the following question propounded to the witness, Charles Bjork, as shown by defendants' exception No. 11, as follows:

"I will ask you whether or not in your judgment—and do not answer this question until counsel objects—if he does—I will ask you whether or not in your judgment the filling of that steamer with water and her subsequent sinking was caused by her unseaworthiness?"

XLII.

The Court erred in declining and refusing the defendants' motion to instruct the jury to return a verdict in [91] favor of the defendants and each of them upon the ground that there was no substantial evidence and no evidence to show that the steamer "Monarch" sustained loss or damage by fire or through collision with another ship or vessel, or with wharves, piers, stages or similar structures, which said request to so instruct the jury is set forth in Defendants' Exception No. 12.

XLIII.

The Court erred in instructing the jury that the evidence on behalf of the defendants tended to sustain no competent defense to the action and that it would be their duty to return a verdict in favor of the plaintiffs against each one of the insurance companies sued for the amount named in the policies, together with interest from the date of filing suit, September 8, 1915, to the date of the verdict, at seven per cent per annum, defendants' objection to said ruling being set forth in Defendants' Exception No. 13.

XLIV.

The Court erred in instructing the jury that in returning the verdict they might give the total

amount to be recovered against the defendants without giving the principal and interest separately, defendants' objection to said ruling being set forth in Defendants' Exception No. 14.

XLV.

The Court erred in refusing to give the following instruction requested by defendants:

> "You are instructed that plaintiff has resting upon it the burden of proving by a fair preponderance of the evidence that the loss of or damage to the steamer 'Monarch,' sued for in this action, was proximately caused by one or more of the perils insured against by all of the policies of insurance, by the defendants [92] and each of them, which are sued upon herein."

XLVI.

The Court erred in refusing to give the following instruction requested by defendants:

> "You are instructed that plaintiff cannot recover in this action against the defendant Aetna Insurance Company unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' was wrecked and totally lost through collision with another ship or vessel or with wharves, piers, stages or similar structures or that it sustained loss or damage caused by fire."

XLVII.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that plaintiff cannot recover in this action against the defendant, Aetna Insurance Company, unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' sustained loss or damage through collision with another ship or vessel or with wharves, piers, stages or similar structures and that such damage amounted to $750, or that it sustained loss or damage caused by fire."

XLVIII.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that plaintiff cannot recover in this action against the defendant, the Union Marine Insurance Company, unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' was wrecked or totally lost through collision with another ship or vessel or with wharves, piers, stages or similar structures or that it sustained loss or [93] damage caused by fire."

XLIX.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that plaintiff cannot recover in this action against the defendant, the Union Marine Insurance Company, unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' sustained loss or damage through collision with

another ship or vessel or with wharves, piers, stages or similar structures and that such damage amounted to $750 or that it sustained loss or damage caused by fire."

L.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that plaintiff cannot recover in this action against the defendant the Hartford Fire Insurance Company unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' was wrecked and totally lost through collision with another ship or vessel, or with wharves, piers, stages or similar structures or that it sustained loss or damage caused by fire."

LI.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that plaintiff cannot recover in this action against the defendant, the Hartford Fire Insurance Company, unless it shall have shown by a fair preponderance of the evidence that the steamer 'Monarch' sustained loss or damage through collision with another ship or vessel or with wharves, piers, stages or similar structures and that such damage amounted [94] to $750 or that it sustained loss or damage caused by fire."

LII.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that there was under the policies here in suit an implied warranty that the 'Monarch' was seaworthy and reasonably fit, at the commencement of her voyage, to encounter the ordinary perils of the voyage, and if you find, by a fair preponderance of the evidence, that the said steamer was not, at the commencement of her voyage, reasonably fit to encounter the ordinary perils of said voyage, your verdict must be for the defendants."

LIII.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that the policies of insurance issued by defendant, Aetna Insurance Company, sued upon herein, insured plaintiff's interest in the steamer 'Monarch' in the sum of $10,000, only as follows:

"Loss or damage caused by fire, in accordance with the terms and conditions of the regular California Standard Form of Fire Policy as issued by the Aetna Insurance Company of Hartford, Conn.

"Loss or damage done to another ship or vessel through collision in accordance with the terms and conditions of the following collision clause:

"COLLISION CLAUSE.

"And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to [95] pay, and shall pay

by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, we, the assurers, will pay the assured such proportion of four-fourths of such sum or sums so paid as our subscriptions hereto bear to the value of the ship hereby insured, and in cases in which the liability of the ship has been contested with our consent in writing, we the assurers, will also pay a like proportion of four-fourths of the costs which the assured shall hereby incur or be compelled to pay; but when both vessels are to blame, then, unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the owners of each vessel has been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages, as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.

"PROVIDED, always that this clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay for the removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

"AND it is further agreed that the principles involved in this clause shall apply to the case where

the vessels are the property in part or in whole of the same owners.

"Loss or damage sustained by the vessel insured through collision with another ship or vessel, or with wharves, piers, [96] stages, or similar structures if amounting to $750. The cost of repairs of such damage being paid without deduction of one-third new for old.

"The policy also covers while vessel is at wharves or docks and permission granted to carry passengers, freight, material and supplies incidental to her trade; to make alterations and repairs for a period exceeding 15 consecutive days, and to use kerosene oil, gas, and electricity for lights and crude petroleum for fuel.

"Permitted to tow and to be towed and to assist vessels and/or craft in all situations.

"Warranted by the assured confined to San Francisco Bay and/or tributaries including Sacramento and/or San Joaquin Rivers, during the currency of this policy."

LIV.

The Court erred in refusing to give the following instruction requested by defendants:

> "You are instructed that the policies of insurance issued by defendant, the Union Marine Insurance Company, sued upon herein, insured plaintiff's interest in the steamer 'Monarch' in the sum of $3,750 only, as follows: (Remaining portion of requested instruction is the same as that embodied in the 53d Assignment of Error.)

LV.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that the policies of insurance issued by defendant, Hartford Fire Insurance Company, sued upon herein, insured plaintiff's interest in the steamer 'Monarch' in the sum of $6,000, only as follows": (The remaining portion [97] of the requested instruction is the same as that embodied in the 53d Assignment of Error.)"

LVI.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed to return a verdict in favor of the defendant, Aetna Insurance Company, for the reason that there is no substantial evidence to sustain a verdict for the plaintiff."

LVII.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed to return a verdict in favor of the defendant, the Union Marine Insurance Company for the reason that there is no substantial evidence to sustain a verdict for the plaintiff."

LVIII.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed to return a verdict in favor of the defendant, the Hartford Fire In-

surance Company, for the reason that there is no substantial evidence to sustain a verdict for the plaintiff."

WHEREFORE, defendants and plaintiffs in error pray that the judgment of the above-entitled court be reversed.

Dated San Francisco, May 8, 1920.

EDWARD J. McCUTCHEN,
McCUTCHEN, WILLARD, MANNON & GREENE,
Attorneys for Defendants and Plaintiffs in Error.

[Endorsed]: Filed May 8, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [98]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Order Allowing Writ of Error.

Upon motion of Edward J. McCutchen, Esq., attorney for the above-named defendants, and upon filing a petition for a writ of error and an assignment of errors,

IT IS ORDERED that a writ of error be and it is hereby allowed to have reviewed in the United States Circuit Court of Appeals, for the Ninth Circuit, the judgment heretofore entered herein and that the amount of bond on said writ of error be and the same is hereby fixed at the sum of seventeen thousand (17,000.00) dollars in so far as the Aetna Insurance Company is concerned; twelve thousand (12,000.00) dollars in so far as the Hartford Fire Insurance Company is concerned, and six thousand (6,000.00) dollars in so far as the Union Marine [99] Insurance Company is concerned, said bonds to serve as a cost bond and as a supersedeas bond on said writ of error.

W. H. HUNT,
Circuit Judge.

[Endorsed]: Filed May 8, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [100]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Bond on Writ of Error (Aetna Insurance Company).

KNOW ALL MEN BY THESE PRESENTS:

That we, Aetna Insurance Company, a corporation, as principal, and Hartford Accident and Indemnity Company, a corporation, organized under the laws of the State of Connecticut, as surety, are held and firmly bound unto Sacramento-Stockton Steamship Company, a corporation, plaintiff in the above-entitled action, in the full and just sum of seventeen thousand dollars ($17,000.00) lawful money of the United States, to be paid to the said plaintiff, Sacramento-Stockton Steamship Company, a corporation, for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors,

representatives and assigns, firmly by these presents. [101]

Sealed with our seals and dated this 8th day of May, 1920.

WHEREAS, the above-named defendants, Aetna Insurance Company, a corporation, Union Marine Insurance Company, a corporation, and Hartford Fire Insurance Company, a corporation, have sued out a writ of error in the United States Circuit Court of Appeals, in and for the Ninth Circuit, to reverse the judgment in the above-entitled action in favor of the plaintiff therein and against the Aetna Insurance Company, a corporation, defendant therein, for the sum of ten thousand five hundred forty-six and 38/100 dollars ($10,546.38), and against the Union Marine Insurance Company, a corporation, defendant therein, for the sum of three thousand nine hundred fifty-four and 90/100 dollars ($3,954.90), and against the Hartford Fire Insurance Company, a corporation, defendant therein, for the sum of six thousand three hundred twenty-seven and 83/100 dollars ($6,327.83), interest and costs;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Aetna Insurance Company, a corporation, shall prosecute such writ of error to effect and answer all damages and costs if it shall fail to make good said plea, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF said Aetna Insurance Company, a corporation, Principal, and the

said Hartford Accident and Indemnity Company, a corporation, Surety, have caused their names to be hereunto subscribed and their corporate seals to be hereunto affixed by officers thereunto duly authorized, this 8th day of May, 1920.

AETNA INSURANCE COMPANY,
By J. H. MAUBER,
Marine Asst. Gen. Agt.

HARTFORD ACCIDENT AND INDEMNITY COMPANY,
By JAMES W. MOYLES, [Seal]
Its Attorney in Fact. [102]

State of California,
City and County of San Francisco,—ss.

On the 8th day of May, in the year one thousand nine hundred and twenty, before me, John McCallan, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared James W. Moyles, known to me to be the person whose name is subscribed to the within and annexed instrument, as the attorney in fact of the Hartford Accident and Indemnity Company, and acknowledged to me that he subscribed the name of Hartford Accident and Indemnity Company thereto as principal and his own name as the attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal, at my office, in the said city and county of San Francisco, the day and year first above written.

[Seal] JOHN McCALLAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission will expire April 12, 1921.

The within bond is hereby approved this 8th day of May, 1920.

W. H. HUNT,
Circuit Judge.

[Endorsed]: Filed May 8, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [103]

HARTFORD ACCIDENT AND INDEMNITY CO.,
HARTFORD, CONNECTICUT.

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Bond on Writ of Error (Hartford Fire Insurance Company).

KNOW ALL MEN BY THESE PRESENTS:

That we, Hartford Fire Insurance Company, a corporation, as principal, and Hartford Accident

and Indemnity Company, a corporation, organized under the laws of the State of Connecticut, as surety, are held and firmly bound unto Sacramento-Stockton Steamship Company, a corporation, plaintiff in the above-entitled action, in the full and just sum of twelve thousand dollars ($12,000.00), lawful money of the United States, to be paid to the said plaintiff, Sacramento-Stockton Steamship Company, a corporation, for which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 8th day of May, 1920.

WHEREAS, the above-named defendants, Aetna Insurance Company, a corporation, Union Marine Insurance Company, a corporation, and Hartford Fire Insurance Company, a corporation, have sued out a writ of error in the United States Circuit Court of Appeals, in and for the Ninth Circuit, to reverse the judgment in the above-entitled [104] action in favor of the plaintiff therein, and against the Aetna Insurance Company, a corporation, defendant therein, for the sum of ten thousand five hundred and forty-six and 38/100 ($10,546.38), and against the Union Marine Insurance Company, a corporation, defendant therein, for the sum of three thousand nine hundred fifty-four and 90/100 ($3,954.90) dollars and against the Hartford Fire Insurance Company, a corporation, defendant therein, for the sum of six thousand three hundred

twenty-seven and 83/100 dollars ($6,327.83) interest and costs;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Hartford Fire Insurance Company, a corporation, shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make good said plea, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF said Hartford Fire Insurance Company, a corporation, Principal, and said Hartford Accident and Indemnity Company, a corporation, Surety, have caused their names to be hereunto subscribed and their corporate seals to be hereunto affixed by officers thereunto duly authorized, this 8th day of May, 1920.

HARTFORD FIRE INSURANCE COMPANY,

By LOUIS ROSENTHAL,

G. A. Mar. Dept.

HARTFORD ACCIDENT AND INDEMNITY COMPANY,

By JAMES W. MOYLES, [Seal]

Its Attorney in Fact. [105]

State of California,
City and County of San Francisco,—ss.

On the 8th day of May, in the year one thousand nine hundred and twenty, before me, John McCallan, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared James W. Moyles, known to me to be the person whose name is subscribed to the

within and annexed instrument, as the attorney in fact of the Hartford Accident and Indemnity Company, and acknowledged to me that he subscribed the name of Hartford Accident and Indemnity Company thereto as principal and his own name as the attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal, at my office, in the said city and county of San Francisco, the day and year first above written.

[Seal] JOHN McCALLAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission will expire April 12, 1921.

The within bond is hereby approved this 8th day of May, 1920.

W. H. HUNT,
Circuit Judge.

[Endorsed]: Filed May 8, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [106]

HARTFORD ACCIDENT AND INDEMNITY CO.,
HARTFORD, CONNECTICUT.

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Bond on Writ of Error (Union Marine Insurance Company).

KNOW ALL MEN BY THESE PRESENTS:

That we, Union Marine Insurance Company, a corporation, as principal, and Hartford Accident and Indemnity Company, a corporation, organized under the laws of the State of Connecticut, as surety, are held and firmly bound unto Sacramento-Stockton Steamship Company, a corporation, plaintiff in the above-entitled action, in the full and just sum of six thousand and 00/100 dollars, ($6,000.00) lawful money of the United States, to be paid to the said plaintiff Sacramento-Stockton Steamship

Company, a corporation, for which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 8th day of May, 1920.

WHEREAS the above-named defendants Aetna Insurance Company, a corporation, Union Marine Insurance Company, a corporation, and Hartford Fire Insurance Company, a corporation, have sued out a writ of error in the United States Circuit Court of Appeals, in [107] and for the Ninth Circuit, to reverse the judgment in the above-entitled action in favor of the plaintiff therein and against the Aetna Insurance Company, a corporation, defendant therein, for the sum of ten thousand five hundred forty-six and 38/100 dollars ($10,546.38) and against the Union Marine Insurance Company, a corporation, defendant therein, for the sum of three thousand nine hundred fifty-four and 90/100 dollars ($3,954.90) and against the Hartford Fire Insurance Company, a corporation, defendant therein, for the sum of six thousand three hundred twenty-seven and 83/100 dollars ($6,327.83), interest and costs;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Union Marine Insurance Company, a corporation, shall prosecute such writ of error to effect and answer all damages and costs if it shall fail to make good said plea, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF said Union Marine Insurance Company, a corporation, principal, and Hartford Accident and Indemnity Company, a corporation, surety, have caused their names to be hereunto subscribed and their corporate seals to be hereunto affixed by officers thereunto duly authorized, this 8th day of May, 1920.

UNION MARINE INSURANCE COMPANY,

By G. H. WEST,
Underwriter.

HARTFORD ACCIDENT AND INDEMNITY COMPANY,

By JAMES W. MOYLES, [Seal]
Its Attorney in Fact. [108]

State of California,
City and County of San Francisco,—ss.

On the 8th day of May, in the year one thousand nine hundred and twenty, before me, John McCallan, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared James W. Moyles, known to me to be the person whose name is subscribed to the within and annexed instrument, as the attorney in fact of the Hartford Accident and Indemnity Company, and acknowledged to me that he subscribed the name of Hartford Accident and Indemnity Company thereto as principal and his own name as the attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal, at my office, in the said city and county of San Francisco, the day

and year first above written.

[Seal] JOHN McCALLAN,

Notary Public in and for the City and County of San Francisco, State of California.

My commission will expire April 12, 1921.

The within bond is hereby approved this 8th day of May, 1921.

W. H. HUNT,
Circuit Judge.

[Endorsed]: Filed May 8, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [109]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants.

Stipulation for Withdrawal of Original Exhibits.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that

all exhibits introduced upon the trial of the above-entitled action may go up to the Circuit Court of Appeals on the writ of error heretofore sued out herein as original exhibits, and that the clerk of the Circuit Court of Appeals is hereby authorized and directed to photograph the original policies of insurance, Exhibits 1, 2 and 3, and annex said photographs to the printed record prepared by him in said cause.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff.

McCUTCHEN, OLNEY & WILLARD,
McCUTCHEN, WILLARD, MANNON & GREENE,
Attorneys for Defendants.

Approved.

R. S. BEAN,
District Judge.

[Endorsed]: Filed October 27, 1920. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [110]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California.

Clerk's Office.—No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation

vs.

AETNA INSURANCE COMPANY, a Corporation, et al.,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of said Court:

Sir:—Please make up record on writ of error heretofore sued out and include therein judgment-roll, bill of exceptions, petition for writ of error, assignment of errors, order allowing writ of error, bond on writ of error, stipulation for sending up of original exhibits.

McCUTCHEN, WILLARD, MANNON & GREENE,

Attorneys for Defendants.

[Endorsed]: Filed Oct. 26, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [111]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 15,930.

THE SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

THE AETNA INSURANCE COMPANY, a Corporation et al.,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing one hundred eleven (111) pages, numbered from 1 to 111, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $52.60; that said amount was paid by the defendants, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 15th day of November, A. D. 1920.

[Seal] WALTER B. MALING,

Clerk United States District Court for the Northern District of California. [112]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Writ of Error.

The United States of America—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States, for the Northern District of California, GREETING:

Because in the record and proceedings, as also in the rendition of a judgment, of a plea which is in

the said District Court, before you, or some of you, between Sacramento-Stockton Steamship Company, a corporation, plaintiff, and Aetna Insurance Company, a corporation, Union Marine Insurance Company, a Corporation, and Hartford Fire Insurance Company, a corporation, defendants and plaintiffs in error, a manifest error hath happened to the great damage of the said defendants and plaintiffs in error, as by this complaint doth appear; and that, being willing that error, if any hath [113] been should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if the judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you have the same at the City and County of San Francisco, in the State of California, within thirty (30) days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 8th day of

May, in the year of our Lord one thousand nine hundred and twenty.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, for the Northern District of California.

By J. A. Schaertzer,
Deputy Clerk. [114]

Receipt of a copy of the within writ of error is hereby admitted this 8th day of May, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
Attys. for Defendant in Error.

[Endorsed]: No. 15,930. In the Southern Division of the United States District Court for the Northern District of California, Second Division. Sacramento-Stockton Steamship Company, a Corporation, Plaintiff, vs. Aetna Insurance Company, a Corporation et al., Defendants and Petitioners. Writ of Error. Filed May 12, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Return to Writ of Error.

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] WALTER B. MALING,

Clerk U. S. District Court, Northern District of California. [115]

Citation on Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Sacramento-Stockton Steamship Company, a Corporation, and to Nathan H. Frank and Irving H. Frank, Its Attorneys, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein Aetna Insurance Company, a corporation, Union Marine Insurance Company, a corporation, and Hartford Fire Insurance Company, a corporation, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable W. H. HUNT, United States Circuit Judge for the Ninth Circuit, this 8th day of May, A. D. 1910.

W. H. HUNT,

United States Circuit Judge. [116]

Receipt of a copy of the within citation is admitted this 8th day of May, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
Attys. for Defendant in Error.

[Endorsed]: No. 15,930. United States District Court for the Northern District of California. Aetna Insurance Co. et al., Plaintiffs in Error, vs. Sacramento-Stockton Steamship Company, Defendant in Error. Citation on Writ of Error. Filed May 12, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

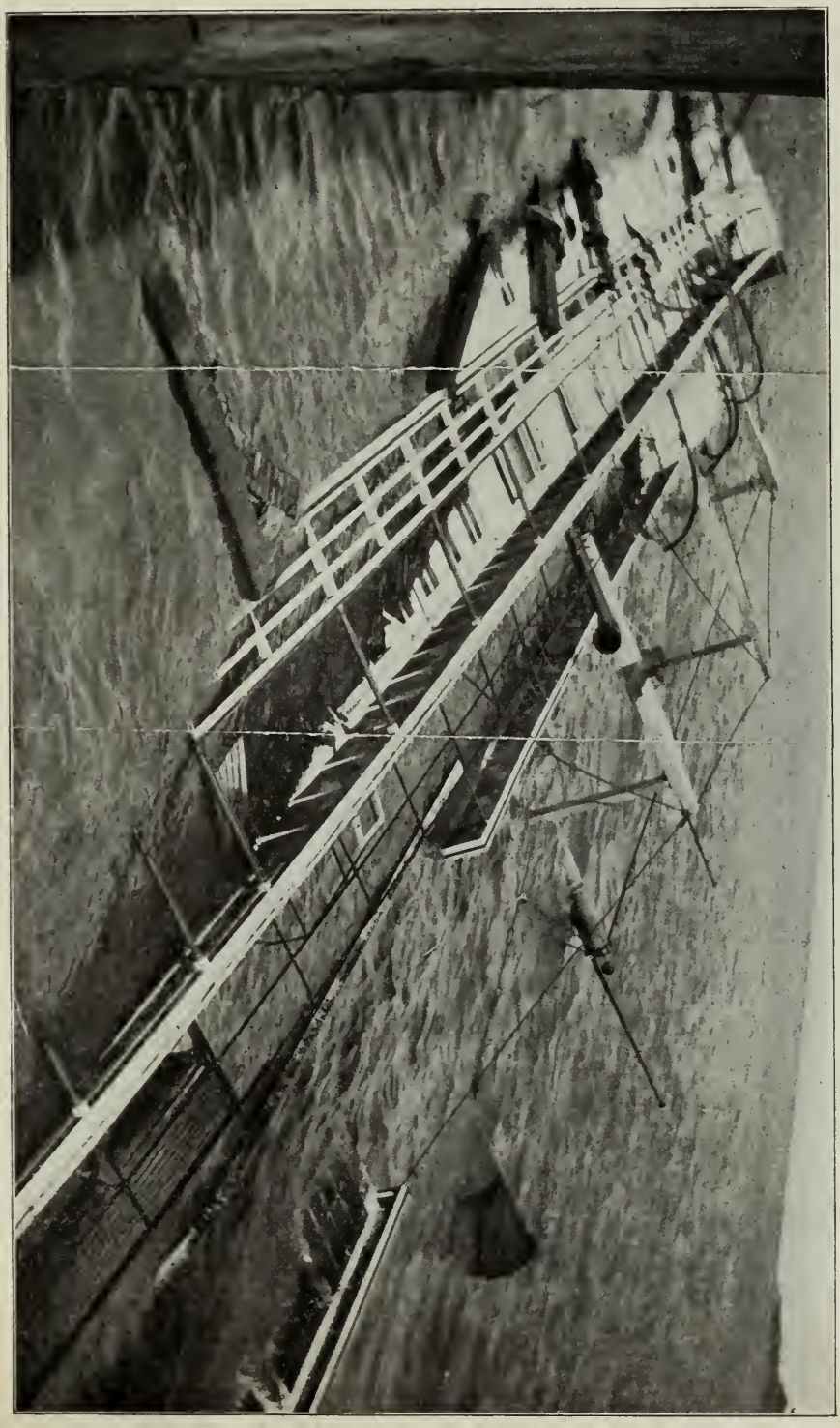
[Endorsed]: No. 3601. United States Circuit Court of Appeals for the Ninth Circuit. Aetna Insurance Company, a Corporation, Union Marine Insurance Company, a Corporation, and Hartford Fire Insurance Company, a Corporation, Plaintiffs in Error, vs. Sacramento Stockton Steamship Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed November 15, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

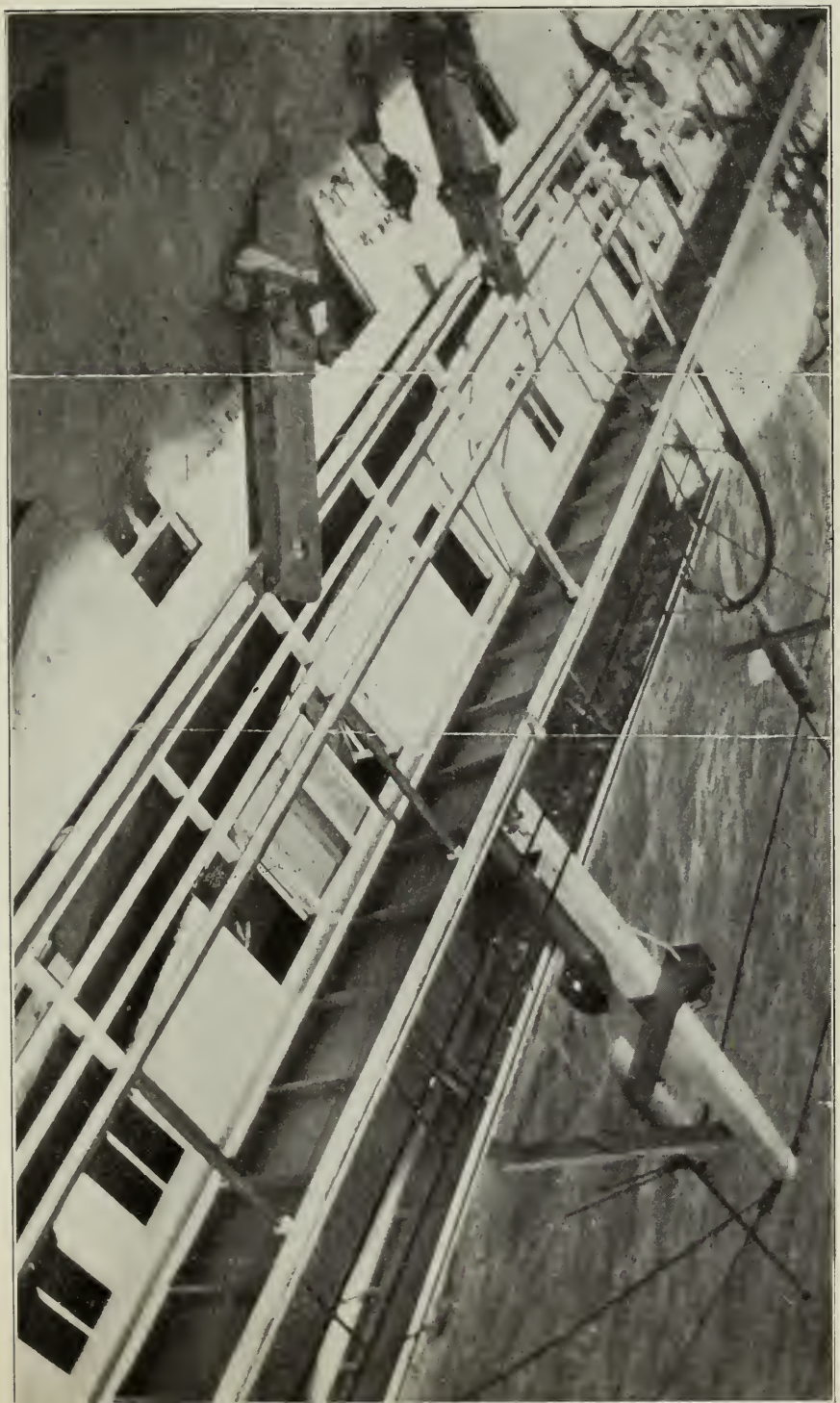
Defendant's Exhibit "A."



[Endorsed]: No. 15930. U. S.——Court, Nor. Dist. of Cala. Defs. Exhibit "A." 6/16/16. M., Clerk.

No. 3601. United States Circuit Court of Appeals for the Ninth Circuit, Filed Nov. 15, 1920. F. D. Monckton, Clerk.

Defendant's Exhibit "B."



[Endorsed]: No. 15930. U. S.——Court, Nor. Dist. of Cala. Defs. Exhibit "B." 6/16/16. M., Clerk.

No. 3601. United States Circuit Court of Appeals for the Ninth Circuit. Filed Nov. 15, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Defendants and Petitioners.

Stipulation and Order Extending Time to and Including July 19, 1920, to File Record and Docket Cause.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for printing the record and filing and docketing this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby extended to and including the 19th day of August, 1920.

Dated: San Francisco, California, June 7, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff.

FARNHAM P. GRIFFITHS,
McCUTCHEN, WILLARD, MANNON & GREENE,
Attorneys for Defendants and Petitioner.

It is so ordered by the Court.

W. H. HUNT,
Judge.

Dated: June 7, 1920.

[Endorsed]: No. 15,930. No. 3601. In the United States Circuit Court of Appeals for the Ninth Circuit. Sacramento–Stockton Steamship Company, a Corporation, Plaintiff, vs. Aetna Insurance Company, a Corporation, Union Marine Insurance Company, a Corporation, and Hartford Fire Insurance Company a Corporation, Defendants and Petitioners. Stipulation and Order Extending Time for Docketing Cause on Writ of Error. Filed Jun. 7, 1920. F. D. Monckton, Clerk. Refiled Nov. 15, 1920. F. D. Monckton Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 15,930.

SACRAMENTO – STOCKTON STEAMSHIP COMPANY, a Corporation,
Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,
Defendants and Petitioners.

Stipulation and Order Extending Time to and Including August 19, 1920, to File Record and Docket Cause.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for printing the record and filing and docketing this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby extended to and including the 19th day of August, 1920.

Dated: San Francisco, California, July 17, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff.

FARNHAM P. GRIFFITHS,
McCUTCHEN, WILLARD, MANNON & GREENE,
Attorneys for Defendants and Petitioner.

It is so ordered by the Court.

W. H. HUNT,
United States Circuit Judge.

Dated: July 19, 1920.

Service of the within stipulation and order extending time and receipt of a copy is hereby admitted this 17th day of July, 1920.

[Endorsed]: No. 15,930. No. 3601 In the United States Circuit Court of Appeals for the Ninth Circuit. Sacramento–Stockton Steamship Company, a Corporation, Plaintiff, vs. Aetna Insurance Company, a Corporation, Union Marine Insurance Company, a Corporation, and Hartford Fire Insurance

Company, a Corporation, Defendants and Petitioners. Stipulation and Order Extending Time for Docketing Cause on Writ of Error. Filed Jul. 19, 1920. F. D. Monckton, Clerk. Refiled Nov. 15, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation.

Defendants and Petitioners.

Stipulation and Order Extending Time to and Including September 20, 1920, to File Record and Docket Cause.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for printing the record and filing and docketing this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby extended to and including the 20th day of September, 1920.

Dated, San Francisco, California, August 17, 1920.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Plaintiff.

FARNHAM P. GRIFFITHS,
McCUTCHEN, WILLARD, MANNON & GREENE,
Attorneys for Defendants and Petitioners.

It is so ordered by the Court.

Dated, August 17th, 1920.

W. H. HUNT,
Judge.

[Endorsed]: No. 15,930. No. 3601. In the United States Circuit Court of Appeals for the Ninth Circuit. Sacramento-Stockton Steamship Company, a Corporation, Plaintiff, vs. Aetna Insurance Company, a Corporation et al., Defendants and Petitioners. Stipulation and Order Extending Time for Docketing Cause on Writ of Error. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including Sept. 20, 1920, to File Record and Docket Cause. Filed Aug. 17, 1920. F. D. Monckton, Clerk. Refiled Nov. 15, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 15,930.

SACRAMENTO-STOCKTON STEAMSHIP COMPANY, a Corporation,

vs.

AETNA INSURANCE COMPANY, a Corporation, UNION MARINE INSURANCE COMPANY, a Corporation, and HARTFORD FIRE INSURANCE COMPANY, a Corporation,

Stipulation and Order Extending Time to and Including November 19, 1920, to File Record and Docket Cause.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the time for printing the record and filing and docketing this cause on writ of error in the United States Circuit Court of Appeals for the Ninth Circuit may be, and the same is hereby extended to and including the 19th day of November, 1920.

Dated: San Francisco, California, September 17, 1920.

NATHAN H. FRANK,
IRVING H. FANK,
Attorneys for Plaintiff.

FARNHAM P. GRIFFITHS,
McCUTCHEN, WILLARD, MANNON & GREENE,
Attorneys for Defendants and Petitioners.

It is so ordered by the Court.

WM. W. MORROW,
Judge.

Dated September 17, 1920.

[Endorsed]: No. 15,930. No. 3601. In the United States Circuit Court of Appeals for the Ninth Circuit. Sacramento–Stockton Steamship Company, a Corporation, Plaintiff, vs. Aetna Insurance Company, a Corporation et al., Defendants and Petitioners. Stipulation and Order Extending Time for Docketing Cause on Writ of Error. Filed Sep. 17, 1920. F. D. Monckton, Clerk. Refiled Nov. 15, 1920. F. D. Monckton, Clerk.